Supreme Court, U.S.
F I L E D
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93-557

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

In Re

DONALD EDGAR JOHNSON AND CLASS OF PRO SE NONLAWYER ALLEGED CONFIDENCE GAME VICTIMS OF FIDUCIARIES AND THEIR LAW FIRMS,

PETITIONERS,

V.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON,JR; THE CARL A. JOHNSON, SR. ESTATE; LANDMAN,LATIMER, CLINK & ROBB Law Firm; PARMENTER O'TOOLE Law Firm; CULVER, LAGUE & McNALLY Law Firm; Michigan Court Of Appeals Ex-Chief Judge ROBERT J. DANHOF; And THE STATE OF MICHIGAN, Jointly And Severally; Ex-Roman Catholic Priest And Realtor ANTHONY J."TONY" MARK; Ex-Chief Judge of U.S. Court Of Appeals For The Sixth Circuit ALBERT J. ENGEL; U.S. District Court Judge BENJAMIN F. GIBSON; KANDY TAPES & RECORDS CORP., KANDY MUSIC PUBLISHERS, And FENTON "BUD" KELLEY of CHANNEL 40 TV Plus American Federation of Musicians-New York (President MARK T. MASSAGLI); JOHNSON TECHNOLOGY f/k/a JOHNSON MOLD & MFG. CO. INC.; PORT CITY MACHINE & TOOL CO.-; JAY CORP.; CAL/CARL CORP.; U.S. Court Of Appeals For The Sixth Circuit Chief Judge GILBERT S. MERRITT; Michigan Supreme Court Chief Justice MICHAEL F. CAVANAGH; U.S. Attorney JOHN A. SMIETANKA; Michigan Attorney General FRANK J. KELLEY; and Michigan Governor JOHN ENGLER.

RESPONDENTS.

PETITION FOR A WRIT OF PROHIBITION, A WRIT OF MANDAMUS, OR BOTH IN THE ALTERNATIVE

PETITION FOR EXTRAORDINARY WRIT

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QUESTIONS PRESENTED

I.

Whether all 1986-93 State and federal district court dismissals grounded on family fiduciaries' conflicting interests law firms' motions for res judicata dismissals were invalid because the nightclub-phono records Confidence Game victim was a resulted indigent on 1970-72 and 1975-78 public workfare who was provided no 1974 fair trial, no timely or delayed appeal of right though he bootstrapped himself off workfare for proper piecemeal filing of $5,000 full transcript, and his trial court evidence was 1974-93 withheld from appellate review in state and federal courts by extrinsic fraud and undue influence of judges originating from same county beholden to same conflicting interests law firms and ex-priest/realtor with undue newsmedia-religious influence upon voters?

II.

Whether State and federal invalid res judicata dismissals mischaracterized into "failure to state a claim upon which relief can be granted" or "no genuine issue of material fact" etc. dismissals were also invalid?

III.

Whether 1983 and 1986 State plus 1992 district court decisions denying "over-one-year" motions for evidentiary hearings for relief from judgments on ground of extrinsic fraud upon the courts were mistakes subject to FRCVP Rules 9(b), 60(b)(6) relief?

IV.

Whether the 1990 District Court res judicata summary judgment dismissal of alleged Victim's "federal question" action plus alleged Victims' "federal question" and "interfering with civil rights" class action, the 1991 Court of Appeals

affirmations, the 1992 Supreme Court affirmations, the 1992 District Court refusal to file alleged Victims' instant "within a **reasonable time**" motion for an FRCVP Rules 9(b), 60(b)(6) evidentiary hearing, and the 1993 Court of Appeals affirmations -- should **all** be set aside on the **extraordinary ground** of **NO DUE PROCESS** from the (a) no full and fair opportunity to litigate ANY claims and issues in **any** previous (19**73**-**90**) nonstop proceedings, (b) 1990-91 misconduct of parties favored, (c) 1990-92 judicial misconduct of the District Judge, (d) 1990-93 continuously ignored Victims' evidence filed in District Court and Court of Appeals, (e) 1992-93 judicial misconduct of the unqualified Court of Appeals judge and main decisionmaker, (f) no State of Michigan just compensation for private properties taken for public use, (g) miscaptioned decisions, (h) unconscionable

unfair equity, and (i) unfair copyright protection?

V.

Whether the federal District Judge should be disqualified and the unqualified U.S. Court of Appeals Judge should be added as a joint and several defendant for 1964-67 nonjudicial and 1992-93 judicial misconduct?

VI.

Whether the State probation of an alleged Conspirator's estate and the federal district court should exercise concurrent jurisdiction under section 42 USCS § 1985 of the Civil Rights Act relating to conspiracy to interfere with civil rights?

VII.

Whether attorney fees and costs of these 12/18/90-3/9/92 plus post-3/10/92 civil rights class action federal appeals should go to the pro se nonlawyer alleged Victim of alleged Conspirators who proceeded in bad faith?

VIII.

Whether the ex-priest and realtor should become a joint and several defendant for allegedly helping to perpetrate and perpetuate the 1964-93 ongoing conspiracies?

IX

Whether the American Federation Of Musicians shall forthwith mail copies of the 1956 Agreement between Kandy Tapes & Records Corp. (Donald E. Johnson, its President) and the American Federation of Musicians to Petitioner plus this Court and inform this Court to whom the Kandy Tapes & Records Corp. title was transferred to between September 20, 1965 and date of the Order by way of an imposter's signature?

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HIMSELF OFF WORKFARE FOR PROPER PIECEMEAL FILING OF $5,000 FULL TRANSCRIPT, AND HIS TRIAL COURT EVIDENCE WAS 1974-93 WITHHELD FROM APPELLATE REVIEW IN STATE AND FEDERAL COURTS BY EXTRINSIC FRAUD AND UNDUE INFLUENCE OF JUDGES ORIGINATING FROM SAME COUNTY BEHOLDEN TO SAME CONFLICTING INTERESTS LAW FIRMS AND EX-PRIEST/REALTOR WITH UNDUE NEWSMEDIA/RELIGIOUS INFLUENCE UPON VOTERS. 25

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28 USC § 1254(1) 37a

28 USC § 1331 . . . . 7,10,29a,36a,66a

28 USC § 1338(a) 7,10,42,49,39a

28 USC § 1651 . . . . . 37a

28 USC § 1651(a) 7

28 USC § 2101(c)(f) 7

42 USCS § 1983 57
42 USCS § 1985 . . 2,11,18,36,39,56,57,67a

42 USCS § 1985(2)(3) . . . 7,10,39,53,29a, 36a,66a

Const. Amend. 1 . . . . . 40,70a,81a

Const. Amends 1,5 . . . . . 14,31,40,70a

Const. Amend. 5 . . . . . 45,70a

Const. Amend. 11 42

Const. Amends. 1, 5, and 14 . 7,10,29a,66a

Const. Amend. 14 . . . . . 34a,81a

Mich. 1963 Const. Art. 1 § 2 57

RULES AND REGULATIONS:

FRCVP 8(a)(1) 7,10,29a,36a,66a

FRCVP 9(a)(b)(e) 7

FRCVP 9(b) . ii,iii.2,8,13,15,31,33,38,22a 42,43, 37a,69a,71a

FRCVP 12(b) 27

FRCVP 12(b)(6) 27

FRCVP 56 27

FRCVO 59 7

FRCVP 60(b) 16,32,33,34,37,38,58,22a,28a

FRCVP 60(b)(1) 32,36

FRCVP 60(b)(6) ii,iii.2,7,8,9,13,14,15,16, 17,20,28,30,31,32,33,34,38,39,40,42,43,48, 50,70,72,54a,69a,70a,71a

GCR 1963, 528.3 . . . . . 34a,54a,55a

GCR 1963, 806.4(2) 35a,51a

MCR 2.003(B)(2)(7) 66,68

MCR 2.116(C)(8)(10) 35a

MCR 7.210 . . . . . 35,68,54a

S. Ct. R. 20 7

SUPPLEMENTAL REFERENCE:

13 ALR Fed 855,856 56

72 ALR2d 443,451 51,56

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

In Re

DONALD EDGAR JOHNSON AND CLASS OF PRO SE NONLAWYER ALLEGED CONFIDENCE GAME VICTIMS OF FIDUCIARIES AND THEIR LAW FIRMS,

PETITIONERS,

V.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON,JR; THE CARL A. JOHNSON, SR. ESTATE; LANDMAN,LATIMER, CLINK & ROBB Law Firm; PARMENTER O'TOOLE Law Firm; CULVER, LAGUE & McNALLY Law Firm; Michigan Court Of Appeals Ex-Chief Judge ROBERT J. DANHOF; And THE STATE OF MICHIGAN, Jointly And Severally; Ex-Roman Catholic Priest And Realtor ANTHONY J."TONY" MARK; Ex-Chief Judge of U.S. Court Of Appeals For The Sixth Circuit ALBERT J. ENGEL; U.S. District Court Judge BENJAMIN F. GIBSON; KANDY TAPES & RECORDS CORP., KANDY MUSIC PUBLISHERS, And FENTON "BUD" KELLEY of CHANNEL 40 TV Plus American Federation of Musicians-New York (President MARK T. MASSAGLI); JOHNSON TECHNOLOGY f/k/a JOHNSON MOLD & MFG. CO. INC.; PORT CITY MACHINE & TOOL CO.-; JAY CORP.; CAL/CARL CORP.; U.S. Court Of Appeals For The Sixth Circuit Chief Judge GILBERT S. MERRITT; Michigan Supreme Court Chief Justice MICHAEL F. CAVANAGH; U.S. Attorney JOHN A. SMIETANKA; Michigan Attorney General FRANK J. KELLEY; and Michigan Governor JOHN ENGLER.

RESPONDENTS.

PETITION FOR A WRIT OF PROHIBITION, A WRIT OF MANDAMUS, OR BOTH IN THE ALTERNATIVE

PETITION FOR EXTRAORDINARY WRIT

Petitioners Donald Edgar Johnson **And**

Class of pro se nonlawyer alleged confidence game victims respectfully pray that an extraordinary writ issue to review the tortious 1964-67 nonjudicial and 1992-93 judicial misconduct of Ex-Chief Judge Engel concerning the orders and opinions of the U.S. Court of Appeals for the Sixth Circuit refusing to overturn the orders and opinions of his former District Court (a) that December 18, 1990 granted joint and several Respondents' motion for res judicata summary judgment dismissal (mischaractorized by court of appeals as failure to state a claim and "Johnson undoubtedly can prove no set of facts in support of his claims that would entitle him to relief") of Petitioner's first-ever 42 USCS § 1985 civil rights class action, and (b) that denied access for Petitioners' March 10, 1993 motion, then refused to provide an FRCVP Rules 9(b) + 60(b)(6) due

process-equal protection evidentiary hearing for determining if said District Court December 18, 1990 **non**class action-captioned res judicata summary judgment dismissal with prejudice and threat of contempt proceedings should be set aside for frauds and undue influence upon those district and appellate courts (1) where Judge Engel had been Chief Judge when Petitioner's state trial court evidence -- proving Engel's nonjudicial and judicial misconduct -- was also 1976-90 continuously withheld from federal due process-equal protection appellate review; (2) where Petitioners were denied a necessary full and fair opportunity to litigate-with-evidence their claims and issues; (3) where Respondents' deceptive evidence was timely "switched" for Petitioners' evidence in District Court and a Respondent disguised himself as a Petitioner as he "switched" the joint

appendices in the Court of Appeals; and (4) where this Supreme Court declined to review the record containing said never-appellate-reviewed evidence containing proof of **Judge Engel's preparing, approving, and longtime possessing the unlawful agreements at the heart of Respondents' vicious 1964-to-date Confidence Game-Interfering With Civil Rights conspiracies!**

OPINIONS BELOW

The December 23, 1992, March 10, 1993 and July 9, 1993 unpublished written opinions of the Court of Appeals are not yet reported and appear in Appendix 1a,8a,10a. The unpublished written April 16, 1992, and May 7 thru July 13, 1992 opinions of the District Court for the Western District of Michigan Southern Division appear in Appendix.30a,31a

JURISDICTION

I, Donald Edgar Johnson, do solemnly swear (a) that as a pro se nonlawyer, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States; (b) that relief is not available in any other form or any other court, and (c) that copies of this petition are being mailed this day to the Michigan Supreme Court Chief Judge, Michigan's Governor, and Michigan's Attorney General. Executed on October 1, 1993.

Donald Edgar Johnson

Donald Edgar Johnson, In Pro Per

The U.S. Court of Appeals' Opinion and Order in this matter were filed on December 23, 1992 by a three-judges panel **including Judge Engel.**[1a] Petitioners filed petition for rehearings and petitions for rehearing en banc plus a motion to disqualify Judge Engel from the panel

on January 4,5, and 6.

On January 6, 1993, the Court "lost" Petitioners' required twenty copies of a petition for rehearing en banc that Petitioner filed in person over the counter in Cincinnati. On February 17, 1993, a clerk filed a letter replacing Judge Engel's name with another judge's on said December 23, 1992 Opinion and Order's caption.[33a] On March 10, 1993, the nonEngel panel denied motions to disqualify Judge Engel and a rehearing en banc while denying rehearing before the original Engel panel.[8a] Petioners filed a motion with supplement for reconsideration of the March 10, 1993 Order plus rehearing en banc plus motion for stay of mandate on March 12,16,26; April 12; July 19,24; August 12, 1993; and this date. The Court of Appeals' denial of the petitions for rehearing and motions was filed on July 9, 1993.[10a] This Court's jurisdiction

is invoked under 28 USCS §§ 1254, 1651(a), 2101 (c)(f) and S.Ct.R. 20. [37a]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments 1,5,14; 42 U.S.C.S. § 1985(2)(3); 28 U.S.C. §§ 1338(a), 1331, and Fed.R.Civ.P. Rules 8(a)(1), 9(a)(b)(e), 59, plus 60(b)(6).

STATEMENT OF THE CASE

The state courts and a U.S. court of appeals' decisions of questions presented were unconscionable and should be settled by this Court.

In ways that conflict with applicable decisions of this Court, Michigan state and federal courts have allowed law firms to represent conflicting debtor-creditor interests while representing clients who solicite phony stock in corporations never formed; granted invalid res judicata summary judgment dismissals that were then mischaracterized; denied due process

of impartial dicisionmakers; and denied access denying "over-one-year" FRCVP 9(b), 60(b)(6) "extraordinary circumstances within reasonable time" motions for evidentiary hearings seeking relief from judgments allegedly procured and prolonged by extrinsic frauds upon the courts.

The U.S. Court of Appeals for the Sixth Circuit has rendered 12/23/92, 3/10/93, and 7/9/93 decisions failing to relieve against 4/16/92 - 7/13/92 "Order Rejecting Pleading" decrees entered in a Michigan District Court pursuant to the court of appeals 7/29/91 mandate, upon Petitioners' 1992 bill of review after the expiration of the 1991 term, for fraud practiced upon the court of appeals in conflict with decisions of other courts of appeals.

> "A court of equity may grant relief against a judgment because of after-discovered fraud, regardless of the term of its entry." Hazel-Atlas Glass Co. v Hartford-Empire Co. (1944) 322 US 238, 88 LEd 1250, 164 S Ct 997.

"Mistakes * * * Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time * * * This rule does not limit the power of a court to * * * set aside a judgment for fraud upon the court. * * * the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." Fed.R.Civ.P. 60(b)(6). (Emphasis added).

"Rule 9(b) applies where fraud lies at core of action, as in action alleging conspiracy to defraud or conceal." Hayduk v Lanna (1985 CA1 Mass) 775 F2d 441.

The Court of Appeals for the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings -- by allowing a judge to be a main decisionmaker, then allowing him to have the papers shuffled to make it appear that he recused himself before impacting the decision -- as to call for an exercise of this Court's power of supervision.

1990-93 FACTS

. [See Appendix for 1964-90 facts] [38a]

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Upper numbers = Pages of Petitioners' 725 pages 1991 Joint Appendix filed in court of appeals 91-1160 + 92-1829 as well as State probate court. (Except number with "a" = Appendix pages herein).

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The United States District Court, Western District of Michigan Southern Division, had June 7, 1990-to-June 29, 1992 jurisdiction of Petitioners' civil rights class action pursuant to Const. Amends. 1,5,14; 42 U.S.C.S. § 1985(2)(3); 28 U.S.C. §§ 1338(a), 1331, Fed.R.Civ.P. Rule 8(a)(1).[183]

> "6/7/90 54 ORDER (1 pg) by Magistrate Hugh W. Brenneman Jr. granting motion to proceed on pltfs' proposed 4th amended complaint (to amend complaint) [41-1]." District Court 1:90CV175 Docket Sheet p 8.

> "6/15/92 125 AMENDMENT by pltf Donald Edgar Johnson to notice of appeal [121-1] (dmh) [Entry date 07/01/92] * * * 6/29/92 -- FILING FEE PAID for appeal on 6/5/92 by pltf in the amount of $105.00, receipt #021339. (dmh)." Dist. Ct. Docket Sheets.

Neither Petioner's nonclass action-captioned non-42 U.S.C.S. § 1985 complaint or Petitioners' classaction-captioned

or Petitioners' classaction-captioned 42 U.S.C.S. § 1985 fourth amended complaint could be **res judicata** summary judgment **dismissed** because (1) it was shown that neither Petioner or Petitioners ever had a full and fair (with **fair trial** plus appellate review of trial court evidence) opportunity to litigate **any** claims or issues in the prior state and federal proceedings as mandated by federal law, and (2) Petitioners had never filed any 42 U.S.C.S. § 1985 civil rights class action before the 1990 #1:90-CV-175 action.

> "Giving preclusive effectg to state court judgments is, however, inappropriate 'where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.' Allen v. McCurry, 449 U.S. 90,101, 101 S.Ct.. 411,418, 66 LEd2d 308 (1980); see also Haring v. Prosise, 462 U.S. 306,313, 103 S.Ct. 2368,2373, 76 LEd2d 595 (1983); Fellowship of Christ Church v. Thorburn, 758 F2d at 1144. Vinson v. Campbell County Fiscal Court, 820 F2d 194,197 (6th Cir.1987)." Walker v. Schaeffer (1988 6th Cir.) 854 F2d 138,142. Also see State Judgments-Federal Courts 72 LEd2d 911,921.

> "[T]he state court judgment cannot be given preclusive effect unless the party against whom the estoppel is asserted had a 'full and fair opportunity' to litigate the issue decided by the court. Allen, 449 U.S. at 101, 101 S. Ct. at 418; see also Walker v Schaefer, 854 F2d 136,142 (6th Cir. 1988); Fellowship of Christ Church v Thorburn, 758 F2d 1140,1144 (6th Cir. 1985) (per curiam)." Eyer v City of Reynoldsburg (1991 ED Ohio) 756 F Supp 344,347.

But high on the United States hierarchy, ex-U.S. Court of Appeals Chief Judge Engel needed a smoke screen and his former District Court associates succumbed to Conspirators' frauds by filing a **non**class action-captioned #1:90-CV-175 erroneous Opinion and Judgment on December 18, 1990 granting Respondents' motion to **res judicata** summary judgment dismiss grounded on Respondents' deceptive 'eighty orders' small dossier of evidence; **not** nonmovants-Petitioners' dossier of a preponderance of evidence:

> "The plaintiff's dossier also contains * * * **eighty orders** * * * the plaintiff's 'civil rights' complaint is simply his latest attempt to attack the judgment entered by the circuit court back in 1974. **The doctrine of** res

and the plaintiff's fourth amended complaint is dismissed with prejudice." 12/18/90 District Court Opinion.

"DONALD EDGAR JOHNSON, Plaintiff, v. RICHARD GORDON JOHNSON et al., Defendants * * * In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's complaint is DISMISSED with prejudice. * * * /s/ Benjamin F. Gibson, U.S. District Judge." 12/18/90 Dist. Ct. Judgment.

Respondents continued their tortious conduct in the Court of Appeals for the Sixth Circuit which affirmed, and in this Supreme Court #91-847 which declined certiorari, reviewing the evidentiary record, and rehearing on March 9, 1992 with a nonclass caption.

On March 10, 1992, the next day, Petitioners were denied access to file their pleadings in District Court for relief from the December 18, 1990 judgment pursuant to Fed.R. Civ.P. Rules 9(b) and 60(b)(6) within a "reasonable time" under extraordinary circumstances.

> **Mistakes * * * Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time. * * * This rule does not limit the power of a court to * * * set aside a judgment for fraud upon the court. Fed.R.Civ.P. Rule 60(b)(6).

District Court neither filed the motion or printed it on the 1:90CV175 docket sheet. It denied access to Petitioner's grievance in violation of Const. Amends. 1 and 5.

> "The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process pretection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amend. 1,5." Matter of N.C. Trading Cust. & Pat. App.(1978) 586 F2d 221.

> "Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

On April 16, 1992, there was District Court's class action-captioned Order rejecting Petitioners' F.R.C.P. Rules 9(b) and 60(b)(6) motion plus supplements for an evidentiary hearing to determine if the December 18, 1990 nonclass action-captioned "final" Judgment was procured and prolonged by frauds upon the courts. The Order stated in essence, "This class action has been res judicata dismissed with prejudice by way of District Court's nonclass action-captioned #1:90-CV- !75 December 18, 1990 Judgment affirmed by the Court of Appeals #91-1160 and the Supreme Court #91-847 March 9, 1992 nonclass action-captioned affirmation."

> "DONALD EDGAR JOHNSON, et al, Plaintiffs, vs. RICHARD GORDON JOHNSON, et al, Defendants. ORDER REJECTING PLEADINGS. Judgment in this action was entered December 18, 1990 granting defendants' motion to dismiss the complaint. Plaintiff subsequently appealed to the United States Court of Appeals for the Sixth Circuit and the decision of this court was affirmed. The Supreme Court thereafter apparently denied plaintiff's petition for a writ of certiorari, and on March 9, 1992, denied plaintiff's

> petition for rehearing. * * * Such motions when predicated on 'fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party,' must be made within one year. Rule 60(b), FRCP." 4/16/92 District Court Order.

On May 7, 1992, District Court issued a nonclass-captioned Order rejecting Petitioners' Emergency Motion For Change In Venue; And In The Alternative, To Alter The (April 16, 1992) Order Denying A Rule 60(b)(6) Evidentiary Hearing Re Defendants' 1990-92 Frauds Upon The Courts With Brief and supplements:

> "ORDER REJECTING PLEADING * * * REASON: A final judgment has been entered dismissing this action and the case is no longer pending in this or any other federal court. * * * /s/ Benjamin F. Gibson, Chief Judge." 5/7/92 District Court Order.

By July 13, 1992 as Petitioners appealed, District Court issued several more nonclass-captioned orders rejecting pleadings.

Petitioners' briefs to the Court of Appeals for the Sixth Circuit argued that

the December 18, 1990-to-March 9,1992 decisions were unequitable nonclass-captioned misadjudications not based upon Petitioners' evidence where Respondents had motioned to dismiss and "switched" their deceptive evidence for Petitioners' in District Court, then masquaraded an Appearance and "switched" their small deceptive Joint Appendix for Petitioners-Appellants' 725 pages Joint Appendix (with copies of evidence) in the Court of Appeals; that said 1990-92 decisions were not captioned a class action; that the March 10, 1992 filing of the Rule 60(b)(6) motion one day after the Supreme Court redeclined to review the record and redenied Certiorari of the nonclass-captioned decisions was within "a reasonable time" and there was a showing of "extraordinary circumstances"; that neither leave from appellate court or an independent action were required; that

Petitioners had a right to petition the Government for a redress of grievances including the right of reasonable access to the courts at a meaningful time in a meaningful manner; that Petioners were entitled to a full and fair opportunity to litigate their court-ordered class action claims and issues on the merits without even further interferance with their basic civil rights of due process, equal protection, and just compensation for private properties taken for public use; that neither the nonclass-captioned complaint or the class-captioned 4th amended complaint deserved a res judicata dismissal where it was shown that neither Petitioner or Petitioners had a full and fair opportunity to litigate any issues or claims in the prior state and federal proceedings; that Petitioners sought concurrent 42 USCS § 1985 jurisdiction with, not an appeal of, the related

Michigan Court of Appeals case probating a Respondent's estate; that the probating should be stayed pending the outcome of these proceedings; that Petitioners' evidence proves that Judge Engel's nonjudicial tortious conduct was orchestrated by an interest group's "getting something on him" so as to own/program him by blackmail while using him to steal substantial properties; that the interest group included an ex-Roman Catholic Priest-Realtor; that Respondents' "switching" constituted further interfering with Petitioners' civil rights; and that Petitioners were deserving of costs.

On December 11, 1992, the case was submitted -- **NOT** utilizing Petitioners' former case #91-1160 725-pages Joint Appendix-**with incriminating evidence** motioned into the 92-1829 record -- to a Court of Appeals three-judges panel including the Judge **Engel** who was

programmed to adjudicate against the Petitioners by withholding appellate review of Petitioners' incriminating evidence:

> "12/11/92 CAUSE SUBMITTED **on briefs** under Sixth Circuit Rule 9(a) before Judges Kennedy, Batchelder, **Engel**. [92-1829] (stj)" Court of Appeals Docket Sheet p 7. (Emphasis added).

On the **original** December 23, 1992 Order and Opinion, (before the papers were shuffled) the Court of Appeals affirmed District Court's rejection of a bona fide motion for Rule 60(b)(6) relief from the December 18, 1990 so-called "final" Judgment -- showing Judge **Engel's** name on the caption:

> "ORDER * * * Before: KENNEDY and BATCHELDER, Circuit Judges, and **ENGEL**, Senior Circuit Judge." The **ORIGINAL** 12/23/92 Court of Appeals Order.

> "12/23/92 ORDER filed : AFFIRMED, appellees' motions to dismiss and requests for costs and attorney fees are denied, plaintiff's motions for misc. relief are denied, pursuant to local rule 9(b)3, decision not for publication pursuant to local rule 24 [92-1829]. Cornelia G. Kennedy, Circuit Judge, Alice M. Batchelder, Circuit Judge, **Albert J. Engel**, Senior Judge. (stj)" **THE ORIGINAL** Court of Appeals **Docket Sheet** p 6 as of January 26, 1993.

When Petitioners moved for Judge Engel's disqualification, rehearings, and Rule 60(b) setting the Order aside from seeing Judge Engel's name on the December 23, 1992 Order affirming District Court's tortious conduct, a Court of Appeals clerk modified the Order on February 17, 1993 so as to **pretend** that Judge Engel recused and replaced himself with another Senior Circuit Judge on the December 11, 1992 submission:

> "Enclosed please find a corrected copy of the court's order filed on December 23, 1992. Upon review, it was found that Judge Engel was NOT on panel that decided this appeal; Judge Brown was. * * * /s/ Sue Johnson, Deputy Clerk. cc: Honorable Benjamin F. Gibson District Court." 2/17/93 Court of Appeals **letter** to all parties."

On July 1, 1993, the Landman law firm ceased doing business. But its 1983 derivative Culver law firm continues with conflicting interests plus all relevant Landman attorneys (except Bradbury). Neither state or federal courts would order Landman firm to hand over to courts

copies of 1974 trial exhibits in its possession. [See 7/2/93 Emergency Motion For Landman Firm To Hand Over Copies Of 1974 Trial Evidence].

On July 9, 1993, the Court of Appeals, where the **real decisionmaker** was ex-Chief Judge **Engel**, referred the matter to the Judge Engel **original** panel which denied an en banc rehearing of its December 23, 1992 Order affirming District Court's denying access/denying a Rule 60(b) evidentiary hearing for determining if the 12/18/90 summary judgment res judicata dismissal was procured and prolonged by frauds upon the courts:

> "[T]he petition for rehearing has been referred to the **original** hearing panel. The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the **original** submission and decision of the case. Accordingly, the petition is denied." 7/9/93 Court of Appeals Order. (Emphasis added).

Thus, the real decisionmaker was the unqualified Judge Engel who drafted,

approved, and longtime possessed the unlawful 1964-65 agreements[476,516,518,523, 535-539, 566,574,585-590] at the heart of this viscious 1964-93 Confidence Game conspiracy-chain of continuing false pretenses, frauds, and undue influences upon the courts.[335,388,389,393,409,413, 415-419,425,427,430,443-452,462,480] Also see Engel 4/6/65 letter to Petitioner approving land title. [7/31/93 2d Supp. to Appts' Objections + Re-petition For Rehearing of 7/9/93 Order.]

But the Court of Appeals ignored Petitioners' petition and re-petition for rehearing of the July 9, 1993 Order, motion for stay of mandate, and objections. The Court issued a mandate of no costs, immediately returned the certified record (containing evidence implicating judge Engel) to District Court, and rejected filing of Petitioner's Petition For An Extraordinary Writ.

On August 27, 1993, the U.S. Court of Appeals began its investigation #93-6-372-37 of Judge Engel's judicial misconduct.

The Office of the President of the American Federation of Musicians, New York, has yet to inform Petitioner to whom and when the official title to the 1956 Kandy Tapes & Records Corp. with copyright protection[542,693] was transferred by an imposter of Petitioner's signature. using the 1956-President-signed dark colored leatheret-covered booklet stolen at the office of Grand Rapids, Michigan law firm of Gillard & Gillard in early 1974 as reported in Muskegon County Circuit Court #73 C7432 CK.

Petitioner has been without any gainful employment since concluding six years engagement at Muskegon's Bob Hi Lanes singalong and dancing "Library" nightclub, January 20, 1990 under mysterious

circumstances concerning bartenders, waitresses, and quality of service. A lifetime of research, study, and building up one of the finest musical shows around (tens of thousands of dollars for just equipment alone) has been mysteriously idle for over three years despite costly efforts to seek employment. He has been and still is an AFM member in good standing since 1941 when he had an eight piece dance band while attending University of Michigan, Ann Arbor.

REASONS FOR GRANTING THE WRIT

I. ALL 1986-93 STATE AND FEDERAL DISTRICT COURT DISMISSALS GROUNDED ON FAMILY FIDUCIARIES' CONFLICTING INTERESTS LAW FIRMS' MOTIONS FOR RES JUDICATA DISMISSALS WERE INVALID BECAUSE THE NIGHTCLUB-PHONO RECORDS CONFIDENCE GAME VICTIM WAS A RESULTED INDIGENT ON 1970-72 AND 1975-78 PUBLIC WORKFARE WHO WAS PROVIDED NO 1974 FAIR TRIAL, NO TIMELY OR DELAYED APPEAL OF RIGHT THOUGH HE BOOTSTRAPPED HIMSELF OFF WORKFARE FOR PROPER PIECEMEAL FILING OF $5,000 FULL TRANSCRIPT, AND HIS TRIAL COURT EVIDENCE WAS 1974-93 WITHHELD FROM APPELLATE REVIEW IN STATE AND FEDERAL COURTS BY EXTRINSIC FRAUD AND UNDUE INFLUENCE OF JUDGES ORIGINATING FROM SAME COUNTY BEHOLDEN TO SAME

CONFLICTING INTERESTS LAW FIRMS AND EX-PRIEST/REALTOR WITH UNDUE NEWSMEDIA/ RELIGIOUS INFLUENCE UPON VOTERS.

"Giving preclusive effectg to state court judgments is, however, inappropriate 'where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.' Allen v. McCurry, 449 U.S. 90,101, 101 S.Ct.. 411,418, 66 LEd2d 308 (1980); see also Haring v. Prosise, 462 U.S. 306,313, 103 S.Ct. 2368,2373, 76 LEd2d 595 (1983); Fellowship of Christ Church v. Thorburn, 758 F2d at 1144. Vinson v. Campbell County Fiscal Court, 820 F2d 194,197 (6th Cir.1987)." Walker v. Schaeffer (1988 6th Cir.) 854 F2d 138,142.

"Before the collateral estoppel may be applied to preclude further judicial review of an issue, **four** basic criteria must be met: * * * (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding." Detroit Police Officer Ass'n v Young (1987 CA6 Mich) 824 F2d 512,515.

"A full and fair hearing means that "where there are facts in dispute, full and fair consideration required consideration by the fact-finding court, **and at least the availability of meaningful appellate review by a higher state court.**" Davis v Blackburn (1986 5th Cir) 803 F2d 807,808. (Emphasis added).

"Prerequisites to defensive use of collateral estoppel are that party against whom doctrine is asserted must have had full and fair opportunity to litigate the issue in prior proceeding and that the issues in present action be identical to the issues on the prior

adjudication." Inland Oil & Transport Co. v City of Mount Vernon (1985 SD Ind) 624 F Supp 122.

"Though Rule 12(b) does not expressly allow collateral estoppel as ground for pretrial dismissal, it can be raised and considered via pretrial motion to dismiss, **but does not result in dismissal where issues litigated in prior adjudication are not identical to issues currently presented.**" Id.

"Federal district courts have **appellate jurisdiction over state courts decisions** which can be collaterally attacked for extrinsic fraud." Moffett v Robbins (1935 DC Kan) 14 F Supp 602, affd (CA10 Kan) 82 F2d 431, cert den 298 US 675, 80 LEd 1397, 56 S Ct 940. (Emphasis added).

"A prior state court judgment would not preclude the federal courts from acting where the state courts were unable or unwilling to protect federal rights." Fellowship of Christ Church v Thorburn (1985 CA6 Mich) 758 F2d 1140,1144.

"Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers, and allegations in pro se complaints must be taken as true and construed in favor of plaintiff." Malone v Colyer (1983 CA6 Tenn) 710 F2d 258

"Question of fact existed as to whether plaintiffs seeking to compel State officials to perform acts allegedly required by the Constitution or to refrain from acts bared thereby could, under the allegations made, be appropriately awarded damages, costs or atorney fees, precluding summary judgment. Red.R. Civ.P. 12(b)(6), 56, 28 USCA." Bradley v School Board of City of Richmond, Virginia

(1971 ED Va) 324 F Supp 401.

II. STATE AND FEDERAL INVALID RES JUDICATA DISMISSALS MISCHARACTERIZED INTO "FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED" OR "NO GENUINE ISSUE OF MATERIAL FACT" ETC. DISMISSALS WERE ALSO INVALID.

The Muskegon Circuit Court #73 C7432 CK combined with #86 21207 CZ June 20, 1986 decision,[88,229] Court Appeals #92822 March 3, 1988 decision,[90,253] the Probate Court #86-59607-SE April 25, 1988 decision,[232] the Court of Appeals probate #108452 July 7, 1989, decision,[257] and District Court #1:90CV175 December 18,1990 decision[207-213] are all **invalid** derivatives of Respondent Culver and Parmenter conflicting interests law firms' verbal and written motions for dismissal on the invalid res judicata ground.

A. THE COURT OF APPEALS AFFIRMATIONS OF DISTRICT COURT FINAL JUDGMENTS ARE VOID BECAUSE THE COURT ACTED IN A MANNER INCONSISTENT WITH DUE PROCESS OF LAW WHEN IT FAILED TO PROVIDE FRCVP RULES 9(b), 60(b)(6) RELIEF WHERE IT WAS ALLEGED THAT THE 1990 DISTRICT COURT RES JUDICATA SUMMARY DISMISSAL FINAL JUDGEMENT HAD

BEEN PROCURED AND PROLONGED BY A 1964-90 CHAIN OF CONTINUING FALSE PRETENSES, FRAUDS, AND UNDUE INFLUENCE UPON THE COURTS.

> "Courts have found a final judgment void * * * if the Court * * * 'acted in a manner inconsistent with due process of law'". Allstate v Michigan Carpenters' Coun. H. & W. Fund (1991 WD Mich) 760 F Supp 665,668

III. THE 1983 AND 1986 STATE PLUS 1992 DISTRICT COURT DECISIONS DENYING "OVER-ONE-YEAR" MOTIONS FOR EVIDENTIARY HEARINGS FOR RELIEF FROM JUDGMENTS ON GROUND OF EXTRINSIC FRAUD UPON THE COURTS WERE MISTAKES SUBJECT TO RULE 60(b)(6) RELIEF.

See the 1983[17a] and 1986[18a] state decisions [241, 242,245] plus the District Court 1992 decisions.[25a-32a]

> "A federal court 'may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake.' Resolute Ins. Co. v State of N.C. (4th Cir 1968) 397 F2d 586." Automobile Club of Mich. v Stacey (1990 ED Mich) 750 F Supp 259.

> "Rule 60(b) recognizes court's inherent power to grant relief from judgment where court has been subjected to fraud and fraud upon court is matter which is so grave that relief is afforded without regard to any time limitation." Great Coastal Express, Inc. v International Brotherhood of Teamsters, etc. (1980, ED Va) 86 FRD 131, 110 BNA LRRM 2052, 29 FR Serv 2d 1181, remanded without op (CA4 VA) 639 F2d 780, later app (CA4 Va) 675 F2d 1349, 110 BNA LRRM 2058, 93 CCH LC

¶ 13447, 33 FR Serv 2d 1234, cert den 459 US 1128, 74 LEd2d 978, 103 S Ct 764, 112 BNA LRRRM 2280, 95 CCH LC ¶ 13933.

"A court of equity may grant relief against a judgment because of after-discovered fraud, regardless of the term of its entry." Hazel-Atlas Glass Co. v Hartford-Empire Co. (1944) 322 US 238, 88 LEd 1250, 164 S Ct 997.

"Rule 60(b)(6) does not particularize factors that justify relief from judgment, but extraordinary circumstances are required." Mendell on behalf of Viscom, Inc. v Gollust (1990 CA2 NY) 909 F2d 724, CCH Fed Secur L Resp ¶ 95378, 17 FR Serv 3d 139, cert gr (US) 112 LEd2d 662, 111 S Ct 669, motion gr (US) 113 LEd2d 238, 111 S Ct 1302 and affd (US) 115 LEd2d 109, 111 S Ct 2173, 91 CDOS 4332, Daily Journal DAR 6696, CCH Fed Secur L Rep ¶ 96001.

"Rule 60(b)(6) was intended to make available those grounds which equity has long recognized as basis for relief." Bros. Inc. v W.E. Grace Mfg. Co. (1963, CA5 Tex) 320 F2d 594, 138 USPQ 357, 7 FR Serv 2d 1143, later proceeding (ND Tex) 227 F Supp 759, 140 USPQ 324, later proceeding (CA5) 330 F2d 65, 141 USPQ 82, 8 FR Serv 2d 60b.33, Case 2 and revd on other grounds (CA5 Tex) 351 F2d 208, 147 USPQ 1, 9 FR Serv 2d 60b.29, Case 5, cert den 383 US 936, 15 LED2d 852, 86 S Ct 1065, 148 USPQ 772.

"Court is authorized to set aside judgment under 'other reason' clause where justice requires that judgment be set aside." United States v Williams (1952 DC Ark) 109 F Supp 454.

"The right to petition the government for a redress of grievances includes the right

of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in as meaningful manner. U.S.C.A. Const. Amends. 1, 5." Matter of N.C. Trading Cust. & Pat. App. (1978) 586 F2d 221.

IV. THE 1990 DISTRICT COURT RES JUDICATA SUMMARY JUDGMENT DISMISSAL OF VICTIM'S "FEDERAL QUESTION" NONCLASS ACTION PLUS VICTIMS' "FEDERAL QUESTION" AND "INTERFERING WITH CIVIL RIGHTS" CLASS ACTION, THE 1991 COURT OF APPEALS AFFIRMATIONS, THE 1992 SUPREME COURT AFFIRMATIONS, THE 1992 DISTRICT COURT REFUSAL TO FILE PETITIONERS' INSTANT "WITHIN A REASONABLE TIME" MOTION FOR A FRCVP RULES 9(b),60(b)(6) EVIDENTIARY HEARING, AND THE 1993 COURT OF APPEALS AFFIRMATIONS -- SHOULD ALL BE SET ASIDE ON THE EXTRAORDINARY GROUNDS OF NO DUE PROCESS FROM (A) NO FULL AND FAIR OPPORTUNITY TO LITIGATE ANY CLAIMS AND ISSUES IN ANY PREVIOUS (1973-90) NONSTOP PROCEEDINGS, (B) 1990-91 MISCONDUCT OF PARTIES FAVORED, (C) 1990-92 JUDICIAL MISCONDUCT OF THE DISTRICT JUDGE, (D) 1990-93 CONTINUOUSLY IGNORED VICTIMS' EVIDENCE FILED IN DISTRICT COURT AND COURT OF APPEALS, (E) 1992-93 JUDICIAL MISCONDUCT OF THE UNQUALIFIED U.S. COURT OF APPEALS JUDGE AND MAIN DECISIONMAKER, (F) NO STATE OF MICHIGAN JUST COMPENSATION FOR PRIVATE PROPERTIES TAKEN FOR PUBLIC USE, (G) MISCAPTIONED DECISIONS, (H) UNCONSCIONABLE ALLEGED EQUITY, AND (I) NO ALLEGED COPYRIGHT PROTECTION.

"Where record shows that it may be possible for plaintiff to prove facts sufficient to demonstrate alleged violation of his due process rights, dismissal of his complaint was inappropriate." Cuellar v Texas Employment

Com. (1987 CA5 Tex) 825 F2d 930.

"Mistakes * * * Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time * * * This rule does not limit the power of a court to * * * set aside a judgment for fraud upon the court. * * * the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." Fed.R.Civ.P. 60(b)(6). (Emphasis added).

"It has been held that relief from a judgment obtained by extrinsic fraud could be secured by motion within 'a reasonable time," which might be after the time stated in the rule had run.'" Fiske v Buder (1942 C.C.A.8) 125 F2d 841; see also inferentially Bucy v Nevada Construction Co. (1942 C.C.A.9) 125 F2d 213. (Emphasis added).

"Where fraudulent representation set up as ground for vacating a judgment constitutes extrinsic fraud, District Court may decide issue presented by motion, even though more than six months has elapsed since entry of the judgment. Fed.Rules Civ.Proc. rule 60(b), 28 U.S.C.A. following section 723c; Code Civ.Proc.Cal § 473." Id. (Emphasis added).

"Motion to vacate voluntary dismissal on ground of mistake was subject to one-year limitation under Rule 60(b)(1), since there was no showing of **extraordinary circumstances which would have brought motion under Rule 60(b)(6).**" Boehm v Office of Alien Property (1945) 120 App DC 100, 344 F2d 194. (Emphasis added).

"[T]he kind of 'extraordinary' circumstances that mandates relief to avoid an 'extreme and undue hardship'". Mendell on behalf of Viscom, Inc. v Gollust. Infra.

"Relief from final judgments under Rule 60(b)(6) may be granted in unusual and exceptional cases only, and requirements are particularly strong when motion is made **more than year after the judgment was entered.**" Federal Deposit Ins. Co. v Alker (1962 DC Pa) 30 FRD 527, affd (CA3 Pa) 316 F2d 236, cert den 375 US 880, 11 LEd2d 111, 84 S Ct 150, reh den 375 US 949, 11 LEd2d 280, 84 S Ct 345, and reh den 376 US 929, 11 LEd2d 628, 84 S Ct 656, and reh den 377 US 920, 12 LEd2d 189, 84 S Ct 1178. (Emphasis added).

"Courts may vacate a judgment '**whenever** that action is appropriate to accomplish justice'. 11 C.Wright & A. Miller, Federal Practice and Procedure, § 2864, at 211-12 (1973) [citing Klapprott v. United States, 335 U.S. 601, 614-15, 69 S.Ct. 384,390, 93 L.Ed. 266 (1949)]." Allstate v Michigan Carpenters' Coun. H. & W. Fund (1991 WD Mich) 760 F Supp 665,668

"The limitation of one year does not apply where 'fraud upon the court' is involved." McDaniel v Jackson (1977) 78 Mich App 218,223,n6

"Rule 9(b) applies where fraud lies at core of action, as in action alleging conspiracy to defraud or conceal." Hayduk v Lanna (1985 CA1 Mass) 775 F2d 441.

"Federal courts have inherent subject matter jurisdiction to review federal judgments obtained by fraud on the court. Fed.R.Civ.P. 60(b), 28 U.S.C.A." Andersen v Roszkowski (1988 DC ND Ill) 681 F Supp 1284.

"If convincing case of fraud on the court in previous decision is made, **previous judgment is vacated** and cost of the proceeding, including attorney fees, may be assessed against defrauding party. Fed.R.Civ.P. 60(b), 28 U.S.C.A." Id. (Emphasis added).

A. NO FULL AND FAIR OPPORTUNITY TO LITIGATE ANY CLAIMS AND ISSUES IN ANY PREVIOUS (1973-93) NONSTOP PROCEEDINGS.

Where Petitioner did not have a fair 1974 trial and his preponderance of evidence was 1974-93 withheld from appellate review by Respondents' 1964-93 chain of continuing false pretenses, frauds, and undue influence upon the courts, res judicata was not a ground for (a) denial of motions for disqualification of law firms and determination that the three Johnson joint venturers were disguised as moneylenders, or (b dismissal of Petitioner's 1986 state estate claim, initial 1990 "federal question" claim or 1990 fourth amendment civil rights "interfering with civil rights" class action claim.

"[T]he concept of collateral estoppel cannot apply in a subsequent federal action when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate the issue in question in the earlier case." State Judgments-Federal Courts 72 LEd2d 911,921.

"Record on Appeal. (A) Content of Record. Appeals to the Court of Appeals are heard on the original record. (1) Appeal from Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, **and the exhibits introduced.**" MCR 7.210. (Emphasis added).

B. 1990-91 MISCONDUCT OF PARTIES FAVORED.

In District Court, the Conspirators made a factual attack on subject matter jursidiction shifting burden of proving by preponderance of evidence that court had subject matter jurisdiction, then "switched" Victims' evidence for Conspirators' before the District Judge could review Victims' preponderance of evidence for adjudicating whether there was subject matter jurisdiction.

In Court of Appeals, a Conspirator disguised himself as a Victim, then

"switched" Victims' 725 pages Joint Appendix for Conspirators' before the Court of Appeals could make a make appellate review of Victims' evidence for providing appelate review of the District Court 12/18/90 decision.

> "In general, relief from judgments has been given under Rule 60(b)(6) in cases where judgment was obtained by **improper conduct** of the party in whose favor it was rendered * * * under circumstances not covered by Rule 60(b)(1) to (5) which required the application of Rule 60(b)(6) in order that case be tried on its merits and justice be done." United States v Cato Bros., Inc. (1959 CA4 Va) 273 F2d 153, cert den 362 US 927, 4 LEd2d 746, 80 S Ct 753. (Emphasis added)
>
> "Usually, the Court grants motions under Rule 60(b)(6) when the judgment was obtained **by a party's improper conduct.**" Securities & Exchange Com. v Thermodynamics, Inc. (1970 DC Colo) 319 F Supp 1380, affd (CA 10 Colo) 464 F2d 457, cert den 410 US 927, 35 LEd2d 588, 93 S Ct 1358. (Emphasis added),

1. The 12/18/90 judgment was not a final judgment of Victims' 4th amended complaint's 42 USCS § 1985 action because it was procured by Conspirators' extrinsic frauds upon the court,

The extrinsic frauds were Conspirators' "switching" of evidence described above.

(a) Relief From The U.S. Court Of Appeals 1992-93 Orders Pursuant To Rule 60(b)(6) Should Be Granted In This Civil Rights Action.

"Investor stated cause of action against attorneys, who allegedly participated in preparing and approving * * * for common-law civil conspiracy by alleging that attorneys acted in concert to ensure viability of entities by committing or aiding and abetting * * * fraud. Mercer v Jaffe, Snider, Raitt and Heuer, P.C. (1989 WD Mich) 713 F Supp 1019.

"If attorney was implicated in fabrication of evidence by party, such implication could constitute fraud upon court." United States v International Tel. & Tel. Corp. (1972 DC Conn) 349 F Supp 22, affd without op 410 US 919, 35 LEd2d 582, 93 S Ct 1363

"Generally only most eggregious misconduct, such as bribery of judge or members of jury, **or fabrication of evidence** by party in which attorney is implicated, will constitute fraud on court under Rule 60(b)." Id. (Emphasis added).

"Fraud is 'extrinsic' or 'collateral' within rule authorizing relief from judgment obtained by such fraud when its effect is to prevent an unsuccessful party from having a trial or from fully presenting his case." Fiske v Buder (1942 C.C.A.8) 125 F2d 841; see also inferentially Bucy v Nevada Construction Co. (1942 C.C.A.9) 125 F2d 213

"If convincing case of fraud on the court in previous decision is made, **previous judgment is vacated** and cost of the proceeding, including attorney fees, may be assessed against defrauding party.

Fed.R.Civ.P. 60(b), 28 U.S.C.A." Andersen v Roszkowski. Supra.

C. 1990-92 JUDICIAL MISCONDUCT OF THE DISTRICT JUDGE.

1. The District Court Committed A Clear Error Of Judgment When The District Judge Mistook Conspirators' Evidence For Victims' in 1990, then **Denied Victims Access To His Court** For Even Filing Or Showing On Docket Sheet Victims' Grievance Of A 3/10/92 Motion For A Rules 9(b), 60(b) Evidentiary Hearing.

The District Judge had cut off Victim at the December 5, 1990 status hearing so as to detract from his preponderance of evidence. He then became aware of Conspirators' "switching" before he 3/11/92 denied access and rejected pleadings that would have corrected his 12/5-12/19/90 adjudicating on the wrong evidence from reading the record. And he was knowingly sucumbing to the power and influence of Judge Engel.

The Victims filed a Rule 60(b)(6) motion within a "reasonable time" and alleged sufficient "extraordinary

circumstances" for District Court to (a) stay the case from being closed, (b) affirm 42 USCS § 1985 Concurrent state-federal civil rights jurisdiction of Victim's claim against the Respondent's estate, and (c) provide a speedy evidentiary hearing to determine if frauds upon the courts existed -- involving "switching of evidence" and a federal appellate judge's misconduct -- that procured and prolonged the December 18, 1990 Res Jucicata summary judgment of dismissal of the nonclass action's court-ordered fourth amended complaint's first-ever 42 USCS § 1985(2)(3) civil rights class action.

The Victim's Rule 60(b)(6) motion was not too late and the case was still pending on March 10, 1992 in the federal courts when that motion was delivered to District Court in Grand Rapids.

Proof of that may be seen on the 1990

civil rights class action's docket sheet #1:90CV175 item 112 + 113 shown in appendix[32a] herein.

> "The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amends. 1, 5." Matter of N.C. Trading Cust. & Pat. App. (1978) 586 F2d 221. (Emphasis added).

> "Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

> "Relief from judgment pursuant to Rule 60(b)(6) should have been granted in case arising over dispute between litigants * * * where District Court judge had violated 28 USCS § 455(a), which concerns diqualification of federal judges * * * and judge should have known of circumstances which disqualified him, for lack of impartiality, from hearing dispute, and * * * delay was entirely attributable to judge's inexcusable failure to disqualify himself." Liljeberg v Health Services Acquisition Corp. (1988, US) 100 LEd2d 855, 108 S Ct 2194.

> "District Court may entertain and act upon Rule 60(b)(6) motion for relief from judgment

of dismissal which was affirmed on appeal without first obtaining appellate leave." Nunnery v Barber (1977 CA4 W Va) 25 FR Serv 3d 856.

See for more authorities.[81a]

D. 1990-93 CONTINUOUSLY IGNORED VICTIMS' EVIDENCE FILED IN DISTRICT COURT AND COURT OF APPEALS.

Petitioners' evidence was ignored by Judge Gibson as he prematurely granted the 12/18/90 res judicata summary dismissal. It was ignored in the 1991 court of appeals and the 1992 supreme court. In 1992-93, the court of appeals ruled on Respondents' motion to dismiss for lack of subject matter jurisdiction without reviewing Petitioners' evidence showing that Respondents took Petitioner's copyrighted private properties for private and public use without mandated just compensation giving district court exclusive jurisdiction. The evidence includes copies of relevant pages of 1964-67 bookkeeping of the venture. (Original ledger and memos collateral are in state

probation of Respondent Johnson Estate).

> "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to * * * copyrights and trade marks. Such jurisdiction shall be exclusive of the courts of the states in * * * copyright cases." 28 USCS § 1338(a).

And that evidence never 1990-93 reviewed by any of the federal courts showed violations of federal laws and the Constitution by the Conspirators in an action never before or since provided a full and fair opportunity to litigate anywhere.

> 1. Rules 9(b), 60(b)(6) Relief Should Be Granted Where Conspirators Had Moved For Res Judicata Summary Judgment Dismissal, **The District Judge** Mistook Conspirators' Evidence For Victims' And **Erroneously Believed** That Civil Rights Actions Against Family Members, Their Law Firms, A State Judge, And The State Were Barred By Res Judicata, Then **Prematurely Dismissed** The Complaints Without Affording An Opportunity For Victims' Evidence To Be Reviewed.

> "Where, because district court erroneously believed that civil rights actions against state officials were barred by U.S.C.A. Const. Amend. 11, complaints were dismissed without affording opportunity to plaintiffs to submit

evidence, * * * **dismissal was premature.**" Scheuer v Rhodes, Ohio (1974) 94 S Ct 1683, 416 US 232, 40 LEd2d 90. (Emphasis added).

"The court below should have set aside its decision because it was the result of fraud practiced on the court itself." United States v International Tel. & Tel. Corp. (1972 DC Conn) 349 F Supp 22, 1972 CCH Trade Cases ¶ 74152, 16 FR Serv 2d 497, affd 410 US 919, 35 LEd2d 582, 92 S Ct 1363, 1973-1 CCH Trade Cases ¶ 74372.

"Where record shows that it may be possible for plaintiff to prove facts sufficient to demonstrate alleged violation of his due process rights, dismissal of his complaint was inappropriate." Cuellar v Texas Employment Com. (1987 CA5 Tex) 825 F2d 930.

E. 1992-93 JUDICIAL MISCONDUCT OF THE UNQUALIFIED U.S. COURT OF APPEALS JUDGE.

Petitioners were denied due process when the unqualified court of appeals judge -- who nonjudicially prepared, approved, and longtime possessed the unlawful agreements at the heart of the conspiracies being adjudicated -- was the real main decisionmaker in the 1992-93 decisions to affirm district court's denial of a Rules 9(b),60(b)(6) evidentiary hearing to determine if frauds existed for setting

aside the 12/18/90 res judicata summary dismissal final judgment.

> "Fraud on court occurs where court is corrupted or influenced or influence is attempted or where judge has not performed his judicial function, i.e., where impartial functions of court have been directly corrupted." Bullock v United States (1985 CA10 Utah) 763 F2d 1191, cert den (US) 88 LEd2d 901, 106 S Ct 862 and cert den (US) 88LEd2d 900, 106 S Ct 862.
>
> See #V.(B) below.

F. NO ALLEGED STATE OF MICHIGAN JUST COMPENSATION FOR PRIVATE PROPERTIES TAKEN FOR PUBLIC USE.

The district court had appellate jursidiction over state courts decisions which can be collaterally attacked for extrinsic fraud. Moffett v Robbins, supra. And those state courts decisions failed to provide any just compensation for Petitioner's private properties taken by Respondents for public use including 5½ years' 100 hours per 7-days week wages for operating/entertaining a **public** nightclub, copyrighted properties used for radio and TV public entertainment,

plus 1956-65 nine (9) years' working 'round the clock researching, planning, building, and operating a sucessful phono records and music publishing company.

> "The fifth Amendment's command that private property taken for public use without just compensation is obligatory on the states." Webb's Fabulous Pharmacies, Inc., et al v Bukwith (1980) 66 LEd2d 938,939.

> "A judgment of a state court, even if it be authorized by state statutes, whereby private property is taken for the state or under its direction for public use without compensation made or secured to the owner, is wanting in the due process of law required by the 14th Amendment of the United States Constitution." Chicago B. & Q.R.Co. v Chicago (1897) 41 LEd 979.

G. MISCAPTIONED DECISIONS.

The decisions' captions did not comport with Petitioners' fourth amended complaint [183] regarding placement of words, "jointly and severally" and was fault of district court for miscaptioning and court of appeals for not correcting it as requested.

1. The previous 1990-91 non-class captioned decisions were miscaptions.

a. All Pro Se Nonlawyer Alleged Confidence Game Victims Of Fiduciaries And Their Law Firms Would Have Common Interest In Preventing Unlawful Interfering With Civil Rights, And Civil Rights Action Brought By Victim Would Be Maintainable As Class Action As To Question Of Interfering With Civil Rights Imposed By Conspirators.

"[A]ll inmates would have common interest in preventing unconstitutional mail censorship, and civil rights action brought by plaintiff would be maintainable as class action as to question of mail censorship imposed by defendants." Preston v Cowan (1973 DC Ky) 369 F Supp 14, affd in part and vacated in part on other grounds (CA6 Ky) 506 F2d 288.

H. **UNCONSCIONABLE UNFAIR EQUITY.**

1. It Is Unconscionable For A Court Of Equity To Allow The 1974 Taking Of Victim's Total 1922-73 Properties Worth Hundreds Of Thousands Of Dollars Invested To The Three Johnson Conspirators' Investment Of A Mere **$22,658** In A Nightclub-Phono Records Corporation That Was And Is Never Formed In Conspirators' Confidence Game-Interfering With Civil Rights Conspiracies.

(a) The Three Johnsons Invested **$22,658** To Victim's~~'s~~ **Hundreds Of Thousands Of Dollars**.

2. The Culver Law Firm's Attorney William F. McNally's **Only** Three Johnson's Exhibit At The 1974 Trial **WAS AND IS A FRAUD UPON THE COURTS**.

The three Johnsons took hundreds of thousands of dollars worth of Victim's equity on 7/27-12/4/70 (under false pretenses of being Moneylenders of a mere $22,659 to Victim) in a venture to form a Michigan **corporation** -- that was to include the Victim -- **that was never formed**. **See LeZontier v Shock 78 Mich App 324.**[38a]

"October 3, 1974 ... (Deficit) ($2,148.88) Note: The above does not include $13,437.00 owed Mr. and Mrs. C.A. Johnson, Sr. as of June 30, 1970 to Mr. Donald Johnson dba Musikist."[153] Three Johnsons' only exhibit presented at the 1974 trial -- **A FRAUD ON THE COURT!**

3. The Victim Should Have Been Granted Relief Under Rules 9(b), 60(b)(6) On Basis Of Equity.

"A court of equity may grant relief against a judgment because of after-discovered fraud." Hazel-Atlas Glass Co. v Hartford-Empire Co., Supra.

"Equitable relief against fraudulent judgments is not of statutory creation, but is a judicially devised remedy fashioned to relieve hardships which from time to time arise from a hard and fast adherence to the court-made

rule that judgments should not be disturbed after the term of their entry has expired." Id.

"Equitable relief will be afforded where the judgment has been procured as result of calculated and premediated conspiracy to defraud." Jungersen v Axel Bros., Inc. (1954 DC NY) 121 F Supp 712, afmd 217 F2d 646, cert den 75 S Ct 784, 349 US 940, 99 LEd 1267, reh den 76 S Ct 99, 350 US 868, 100 LEd 769.

"Rule 60(b)(6) was intended to make available those grounds which equity has long recognized as basis for relief." Bros. Inc. v W.E. Grace Mfg. Co. (1963, CA5 Tex) 320 F2d 594, 138 USPQ 357, 7 FR Serv 2d 1143, later proceeding (ND Tex) 227 F Supp 759, 140 USPQ 324, later proceeding (CA5) 330 F2d 65, 141 USPQ 82, 8 FR Serv 2d 60b.33, Case 2 and revd on other grounds (CA5 Tex) 351 F2d 208, 147 USPQ 1, 9 FR Serv 2d 60b.29, Case 5, cert den 383 US 936, 15 LED2d 852, 86 S Ct 1065, 148 USPQ 772.

"The provision permitting the court to relieve a party from final judgment, order, or proceeding constitutes a grand reservoir of **equitable power** to do justice in a particular case." Pierre v Bernuth, Lembcke Co. (1956 DC NY) 20 FRD 116. (Emphasis added).

"Equity will set aside a decree in a patent infringement suit." Hazel-Atlas Glass Co. v Hartford-Empire Co., Supra.

I. UNFAIR COPYRIGHT PROTECTION.

Neither Michigan state or federal courts would provide due process copyright protection from Conspirators' thefts.

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to * * * copyrights and trade marks. Such jurisdiction shall be exclusive of the courts of the states in * * * copyright cases. 28 USCS § 1338(a).

V. THE FEDERAL DISTRICT JUDGE SHOULD BE DISQUALIFIED AND THE UNQUALIFIED U.S. COURT OF APPEALS JUDGE SHOULD BE ADDED AS A JOINT AND SEVERAL DEFENDANT FOR 1964-67 NONJUDICIAL AND 1992-93 JUDICIAL MISCONDUCT.

A. RESPONDENT JUDGE GIBSON SHOULD BE DISQUALIFIED AS A FURTHER DECISIONMAKER IN THIS CASE.

Judge Gibson is partial to Respondents as shown repeatedly through the years. He has displayed conduct resembling Judge Engel's puppet where ex-District Chief Judge Engel has been and is programmed to interfere with Petitioner's civil rights because of Respondents' 1973-93 conspiracy to interfere with Petitioners' basic civil rights.

District Judge Gibson cut Petitioner off at the December 5, 1990 status hearing; allowed Respondents' evidence to be "switched" for Petitioners; where

Respondents moved for res judicata dismissal; misadjudicated the December 18, 1990 res judicata summary judgment dismissal on movants' rather than nonmovants' evidence; and steadfastly kept Petitioners' evidence from having its first-ever appellate review by his 12/5-12/18/90 plus 3/10-7/13/92 tortious judicial misconduct unbecoming of a judge intent on a goal of justice and upholding the federal laws and Constitution. Judge Gibson has been and is not the impartial decisionmaker called for by due process.

> "A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process." Clemens v Bruce (1982) 122 Mich App 35.

1. Relief From The U.S. Court Of Appeals 1992-93 Orders Pursuant To Rule 60(b)(6) Should Be Granted In This Civil Rights Action.

> "Relief from judgment pursuant to Rule 60(b)(6) should have been granted in case arising over dispute between litigants * * * where District Court judge had violated 28 USCS § 455(a), which concerns diqualification of federal judges * * * and judge should have known of circumstances which disqualified him, for

lack of impartiality, from hearing dispute, and * * * delay was entirely attributable to judge's inexcusable failure to disqualify himself." Liljeberg v Health Services Acquisition Corp. (1988, US) 100 LEd2d 855, 108 S Ct 2194.

B. THE UNQUALIFIED U.S. COURT OF APPEALS JUDGE SHOULD BE ADDED AS A JOINT AND SEVERAL DEFENDANT FOR 1964-67 NONJUDICIAL AND 1992-93 JUDICIAL MISCONDUCT.

"Generally, it may be said that prior representation or activity as attorney or counsel disqualifies a judge from sitting or acting in a cause or proceeding." 72 ALR2d 443,451.

1. For Nonjudicial Misconduct.

In the 1964-93 chain of continuing false pretenses, frauds, and undue influence upon the courts, the U.S. Court of Appeals Judge Engel has been a vital link. If he hadn't prepared, approved, and 1964-67 possessed those unlawful agreements, the Victim would never have given him his confidence, allowed him to possess the agreements rather than take them into his own custody. And Victim would never have gone on the venture past

April 15, 1965. See 7/31/93 2d supplement to objection and re-petition for rehearing of July 9, 1993 order.

> "Confidence Game" is term of art involving taking of money by fraud from victim by means of trick or deception after victim's confidence has first been secured through some false representation or deception." State v Carr 543 P2d 441,443, 112 Ariz 453.

Judge Engel prepared and approved and 1964-67 possessed those 4/15/65 documents along with Parmenter O'Toole law firm diguising the three Johnson Conspirators as moneylenders to Victim with valid $20,600 promissory note and valid mortgage as security. Those documents were -- along with approving Chief Justice Rehnquist's brother-in-law-drafted evasion of DiGiavanni's $25,000+ federal tax liens on the nightclub land using Victim's name on land 1965-71 -- **false pretenses and frauds upon the courts**.

"If two or more persons * * * **go in disguise on the highway or on the premises of another** * * * whereby another is injured in his person or property * * * the party so injured or deprived may have an action for recovery of damages * * * against any one or more of the conspirators." 42 USCS § 1985(2)(3). (Emphasis added).

"The gist of the crime of conspiracy is the **unlawful agreement**." Roll v People (1955 Colo) 284 P2d 665.

"The focus of a civil conspiracy claim is the **damage**, not the conspiracy itself." Mercer v Jaffe, Snider, Raitt and Heuer, P.C. (1989 WD Mich) 713 F Supp 1019.

"Investor stated cause of action against attorneys, who allegedly participated in **preparing and approving** * * * for common-law civil conspiracy by alleging that attorneys acted in concert to ensure viability of entities by committing or aiding and abetting * * * fraud. Id. (Emphasis aded).

"Judge's private, prior agreement to decide in favor of one party is not judicial act, and proof of agreement may form basis of liability in action under **42 USCS § 1985** whether or not judge is immune from liability for subsequent judicial acts. Rankin v Howard (1980 CA9 Ariz) 633 F2d 844, cert den 451 US 939, 68 LEd2d 326, 101 S Ct 2020 and (disagreed with Dykes v Hosemann (CA11 Fla) 743 F2d 1488, on reh, en banc (CA11 Fla) 776 F2d 942, on remand (CA11 Fla) 783 F2d 1000, cer den (US) 93 LEd2d 574, 107 S Ct 569) and (disagreed with Halloway v Walker (CA5 Tex) 765 F2d 517, reh den, en banc (CA5 Tex) 773 F2d 1236 and cert den 474 US 1037, 88 LEd2d 583, 106 S Ct 605, later app (CA5 Tex) 784 F2d 1287, later proceeding (CA5

Tex) 784 F2d 1294 and reh den (CA5 Tx) 790 F2d 1170, reh den (CA5 Tex) 800 F2d 479, later op (CA5 Tex) 811 F2d 263, later proceeding CA5 Tex) 826 F2d 335, reh den, en banc (CA5 Tex) 830 F2d 1126 and reh den (US) 93 LEd2d 576,107 S Ct 571 and (disagreed with Krempp v Dobbs (CA5 Tex) 775 F2d 1319, 1985-2 CCH Trade Cases ¶ 66847) and disagreed with Ashelman v Pope (CA9 Ariz) 793 F2d 1072)." (Emphasis aded).

2. For Judicial Misconduct.

If Judge Engel hadn't been the main federal decisionmaker as Victim's pleadings were adjudicated 1977-93 in federal courts where he was adjudicating, there would have been no viscious ongoing Confidence Game conspiracies beginning when Judge Engel began impacting federal decisions.

"A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process." Clemens v Bruce (1982) 122 Mich App 35.

"A judge or decisionmaker is disqualified on the basis of due process from hearing a case without a showing of actual bias where the judge ... (4) might have prejudged the case because of prior participation of an accuser, investigator, fact finder or initial decisionmaker ... the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Crampton v Dept. of State (1975) 395 Mich 347.

Judge Engel has obviously violated 28 USCS § 455(a), which concerns disqualification of federal judges, and he should have known of circumstances which disqualified him, for lack of impartiality, from hearing the appeal, and 1992-93 further interfering with Victims' civil rights was entirely attributable to the judge's inexcusable failure to disqualify himself before impacting the Court's decisions. He was nonjudicially the attorney who prepared, approved, and longtime possessed the unlawful agreements at the heart of Conspirators' conspiracies.

> "Relief from judgment pursuant to Rule 60(b)(6) should have been granted in case arising over dispute between litigants * * * where * * * Court judge had violated 28 USCS § 455(a), which concerns diqualification of federal judges * * * and judge should have known of circumstances which disqualified him, for lack of impartiality, from hearing dispute, and * * * delay was entirely attributable to judge's inexcusable failure to disqualify himself." Liljeberg v Health Services Acquisition Corp. (1988, US) 100 LEd2d 855, 108 S Ct 2194.

"§ 455. **Disqualification of justice, judge, or magistrate** (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify hgimself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiaary facts concerning the proceedings; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; * * * (5) He * * * (iv) Is to the judge's knowledge likely to be a material witness in the proceeding." 28 USCS §455(a)(b)(1)(2)(5)(iv).

"No judge shall hear or determine an appeal from the decision of a case or issue tried by him." 13 ALR Fed 855,856.

"Generally, it may be said that prior representation or activity as attorney or counsel disqualifies a judge from sitting or acting in a cause or proceeding." 72 ALR2d 443,451.

See 1/28/93 BRIEF IN SUPPORT OF SUGGESTION FOR REHEARING EN BANC, CA6 #92-1829.

VI. THE STATE PROBATION OF A DEFENDANT'S ESTATE AND THE FEDERAL DISTRICT COURT SHOULD EXERCISE CONCURRENT JURISDICTION UNDER SECTION 42 USCS § 1985 OF THE CIVIL RIGHTS ACT RELATING TO CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS.

See Petitioner's Claim against Respondent estate.[197]

"State courts have concurrent jurisdiction with the federal courts over federal civil rights actions." Eliason Corp. v Bureau of Saf. and Reg. of Mich. (1983 WD Mich) 564 F Supp 1298.

"State courts exercise concurrent jurisdiction with federal district courts over cases arising under both sections of Civil Rights Act providing for civil actions for deprivation of rights and section of Civil Rights Act relating to conspiracy to interfere with civil rights. 42 USCA § 1983,1985." Bennum v Board of Governors of Rutgers, ETC. (1976 DC NY) 413 F Supp 1274,1279, 12 BNA PEP Cas 1393, 123 CCH EPD ¶ 10981.

"Equity may interfere with a probate order obtained by positive fraud." Kita v Matuzak (1974) 55 Mich App 288.

"There is a relationship between federal and State claim permitting conclusion that there is but one constitutional case involved, arising from same common nucleous of operative fact." Johnson v Miller (1973 ED Ky) 367 F Supp 541.

"No person shall be denied the equal protection of the laws." Michigan 1963 Const. Art. 1 § 2.

A. THE 1986-93 STATE COURTS' RES JUDICATA DISMISSALS OF PETITIONER'S STATE PROBATE COURT ISSUES AND CLAIMS -- BASED ON THE UNFAIR 1974 STATE TRIAL'S EVIDENCE 1974-86 WITHHELD FROM APPELLATE REVIEW -- SHOULD BE SET ASIDE ON GROUND OF A LACK OF A FULL AND FAIR OPPORTUNITY TO LITIGATE THE CLAIMS AND ISSUES IN THE 1974-86 PRIOR PROCEEDINGS.

"[A]ssuming substantiality of the federal issues, there is power in federal courts to hear the whole." United Mine Workers v Gibbs (1966) 383 US 715, 16 LEd2d 218, 86 S Ct 1130.

"If convincing case of fraud on the court in previous decision is made, previous judgment is vacated and cost of the proceeding, including attorney fees, may be assessed against defrauding party. Fed.R.Civ.P. 60(b), 28 U.S.C.A." Andersen v Roszkowski. Supra.

VII. ATTORNEY FEES AND COSTS OF THESE 12/18/90-3/9/92 PLUS POST-3/10/92 CIVIL RIGHTS CLASS ACTION FEDERAL APPEALS SHOULD GO TO THE PRO SE NONLAWYER ALLEGED VICTIM OF ALLEGED CONSPIRATORS WHO PROCEEDED IN BAD FAITH.

"If convincing case of fraud on the court in previous decision is made, previous judgment is vacated and cost of the proceeding, including attorney fees, may be assessed against defrauding party. Fed.R.Civ.P. 60(b), 28 U.S.C.A." Andersen v Roszkowski. Supra.

"American common law allows an award of attorneys' fees against a party who proceeds in bad faith." Marek v Chesny 87 LEd2d 713,738.

"[I]n narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel * * * The first, known as the 'common fund exception,' derives not from a court's power to control litigants, but from its historic equity jurisdiction * * * and allows a court to award attorney's fees **to a party whose litigation efforts directly benefit others.**" Chambers v NASCO, Inc. (1991) 115 LEd2d 27, at 44. (Emphasis added).

VIII. THE EX-PRIEST AND REALTOR SHOULD BECOME A JOINT AND SEVERAL DEFENDANT FOR ALLEGEDLY HELPING TO PERPETRATE AND PERPETUATE THE 1964-93 ONGOING CONSPIRACIES.

Respondent Anthony J. "Tony" Mark conspired with Attorney Thomas J. O'Toole's law partner with defense contract connections in January 1965 to set up the three Johnsons and their privies with lucrative defense contracts to pay for high legal fees, expensive machinery, etc. He gave president of the nightclub-phono records venture, Respondent Richard Johnson, choice of getting rich with defense contracts or lieing to everyone that he gave Petitioner sole custody of pooled monies; that Petitioner alone decided what nightclub to purchase; that Petitioner borrowed three Johnsons' monies by taking full custody and control and purchasing the liens-laden nightclub all by himself; that Petitioner made all the

decisions alone to purchase, operate, and own the nightclub; and that Petitioner received full custody and control of pooled $20,600 for valid 4/15/65 promissory note that Richard, not Parmenter law firm, retained, etc.

Ex-priest Mark arranged Richard to first have Richard's name on land for getting the mortgage in Richard's, his privies and his conflicting interests law firms' control so as to take over the total assets of the nightclub-phono records venture after Petitioner invested everything he owned into it INCLUDING THE PRIZE: THE PHONO RECORDS/MUSIC PUBLISHING ASSETS.

Mark set attorney Mat C. Locke to draft and type up Petitioner's power of attorney to Richard, 9/27/64, for a cut of to-be $31,000, not $18,000, liquor license profit to-be plus promotion to Muskegon Heights municipal judge because Mark arranged for then-municipal judge,

John H. Piercey, to become the Muskegon County Circuit Judge programmed to rule that the three Johnson were never on a joint venture with Petitioner, the Landman law firm was not representing both buyers and sellers of the nightclub, Petitioner's phono records were lousy as was his talent as was his character etc.

Mark arranged for Engel to be the judge who would block Petitioner from taking back any of his assets or receiving any compensation for 6½ years 7 days weekly 100 hours per week high stress (no working capital-beginning with a pile of debts) quality (from many years of experience) nightclub labor on top of similar 1956-64 phono records/music publishing high quality labor.

Mark and associates may have arranged for Landman firm's V.S. "Sam" Laurin to evade DiGiavanni's federal liens on nightclub in order to make his commission

from setting up the nightclub sale contingent on a $65,000 price; not the $82,000 price quoted to William Thornberry's Club 87 Inc. which ended up purchasing the nightclub from the three Johnsons after they put it in Petioner's name in 1965 then foreclosed on Petitioner via all three Respondent law firms, May 20, 1970, as if they were not on a joint venture when they were.

In March, 1965, Mark conspired with attorney O'Toole to disguise the three Johnsons as moneylenders not on a joint venture by paying O'Toole his $45 fee.[540] And Mark and his Sun Agency (then not-incorporated) invested thousands of dollars in the venture that was never repaid by date of 7/27/70 takeover by decedent Carl A. Johnson, Sr. who immediately had Petitioner sign papers transfering assets to Richard, Carl-Jr, Jay Corp, and attorney Fred C. Culver, Jr. herein.

In April, 1965, Mark conspired with Engel & Engel n/k/a Parmenter O'Toole law firm to disguise the three Johnson as moneylenders not on a joint venture at the meeting presided by then-attorney Albert J. Engel.

Mark and associates probably arranged for huge crew building a huge church to charge huge fee for electrical work readying nightclub to pass inspection for April 24, 1965 opening.

On November 22, 1966, Mark and his Sun Agency Inc. associate, Richard Greenwald, witnessed Respondent Carl Alfred Johnson, Jr. promise Victim fair equity in a corporation to be formed as a reward for his invested assets and services.

Mark committed perjury by impressing the 1974 trial court that Petitioner had big cash forthcoming <u>for sure</u> from sale of phono records in Chicago; that Petitioner alone purchased the too large,

too expensive, nightclub eyesore in need of much much remodeling before opening the door, April 24, 1965 all by himself of his own sole decision.

Mark and attorney Mathew C. Locke led the four Johnson nightclub buyers to believe liquor license cost was to be $18,000; then after months readying the property and land sale, the cost was $30,000 with heavy payments due monthly plus high interest penalties from conspiring with license sellers and their Parmenter law firm; then told everybody that Petitioner bought it all by himself contrary to receipt he issued to Petitioner and Richard.[463]

IX. THE AMERICAN FEDERATION OF MUSICIANS SHALL FORTHWITH MAIL COPIES OF THE 1956 AGREEMENT BETWEEN KANDY TAPES & RECORDS CORP. (DONALD E. JOHNSON, ITS PRESIDENT) AND THE AMERICAN FEDERATION OF MUSICIANS TO PETITIONER PLUS THIS COURT AND INFORM THIS COURT TO WHOM THE KANDY TAPES & RECORDS CORP. TITLE WAS TRANSFERRED TO BETWEEN SEPTEMBER 20, 1965 AND DATE OF THE ORDER BY WAY OF AN IMPOSTER'S SIGNATURE.

While the union has acknowleged having a Kandy Tapes & Records Corp. as a registered affiliate, it has failed to to inform the Victim who took title to his Kandy Tapes & Records Corp. after September 20, 1965. Unless the union's president's office can come forward with the answer voluntarily, it should be ordered to; and in the alternative, to become a joint and several defendant for failing to keep its contract with Victim to prevent theft of title of his Kandy Tapes & Records Corp. copyrighted assets.

X. THIS SUPREME COURT'S CHIEF JUSTICE REHNQUIST SHOULD DISQUALIFY HIMSELF AT THE ONSET OF THESE PROCEEDINGS.

Because of his late brother-in-law's, Landman/Culver firm's attorney V.S. "Sam" Laurin's financial gain by using the victim to perpetrate DiGiavanni's 1965-71 federal tax evasion.

> "A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process." Clemens v Bruce (1982) 122 Mich

App 35.

"A judge or decisionmaker is disqualified on the basis of due process from hearing a case without a showing of actual bias where the judge ... (4) might have prejudged the case because of prior participation of an accuser, investigator, fact finder or initial decisionmaker ... the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Crampton v Dept. of State (1975) 395 Mich 347.

"A judge is disqualified when the judge cannot impartially hear a case, including a proceeding in which the judge ... (2) is personally biased or prejudiced for or against a party or attorney; ... (7) is disqualified by law for any other reson." MCR 2.003(B)(2)(7).

"Judge was disqualified from hearing a cause if it appeared that he would be called as a witness in it." State ex re. Carroll v Junker 79 Wash 2d 12, 482 F2d 775

XI. THE MICHIGAN SUPREME COURT CHIEF JUSTICE CAVANAGH SHOULD DISQUALIFY HIMSELF FROM PROBATION OF RESPONDENT ESTATE AT THE ONSET OF PROCEEDINGS.

The now-Chief Justice Michael F. Cavanagh was on Respondent then-Chief Judge Danhof's panel that, without an appellate review of the 1974-82 trial court evidence, **1978-79** denied disqualification of estate and sureties'

conflicting debtor-creditor interests Parmenter O'Toole law firm and Culver, Lague & McNally law firm herein.[236-238] (In these conspiracies, there was Judge Danhof's 1970-73 nonjudicial misconduct where his Muskegon law firm and Culver law firm's attorney Fred C. Culver, Jr. helped perpetrate theft of a federal credit union-U.S. taxpayers' moneys while perpetuating theft of Victim's properties -- plus 1975-89 judicial misconduct in blocking a delayed appeal of right of the 1974 trial court judgment and an appellate review on the complete-with evidence record of the 1983-86 motion/ independent action for relief from said 1974 judgment for frauds upon the courts).

Justice Cavanagh was also on the Michigan Supreme Court that **1984-to-date** never granted Victim leave to appeal any "Danhof" court of appeals decisions.[269-276]

"Record on Appeal. (A) Content of Record. Appeals to the Court of Appeals are heard on the original record. (1) Appeal from Court. In an appeal from a lower court, the record consists of the papers filed in that court of a certified copy, the transcript of any testimony or the proceedings in the case appealed, and the exhibits introduced." MCR 7.210. (Emphasis added).

"A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process." Clemens v Bruce (1982) 122 Mich App 35.

"A judge or decisionmaker is disqualified on the basis of due process from hearing a case without a showing of actual bias where the judge ... (4) might have prejudged the case because of prior participation of an accuser, investigator, fact finder or initial decisionmaker ... the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Crampton v Dept. of State (1975) 395 Mich 347.

"A judge is disqualified when the judge cannot impartially hear a case, including a proceeding in which the judge ... (2) is personally biased or prejudiced for or against a party or attorney; ... (7) is disqualified by law for any other reson." MCR 2.003(B)(2)(7).

"Judge was disqualified from hearing a cause if it appeared that he would be called as a witness in it." State ex re. Carroll v Junker 79 Wash 2d 12, 482 F2d 775

CONCLUSION

The ex-catholic priest realtor and associates conspired with the three Johnsons fiduciaries who conspired with their law firms to carry out the 1964-93 seven conspiracies including the conspiracy to interfere with civil rights in violation of the federal laws and Constitution which the joint and several Respondent judges and Judge Engel were sworn to uphold above demands of their mentors. Rather than uphold the Constitution or quit their lucrative jobs as judges, said judges stopped evidentiary/discovery proceedings before they even got started in county circuit, county probate, state appellate, and federal district courts -- in violation of federal law prohibiting res judicata where there has been no previous full and fair opportunity to litigate claims and issues. And both State and federal courts denied reasonable timely access

to Victims' "within reasonable time" "extraordinary circumstances" "over-one-year" **motions** for relief (for fraud upon the courts) from the invalid res judicata summary dispositition dismissal judgments that were mischaracterized. And Respondent Judge Gibson (a) denied due process when he was partial to Respondents during the status conference, (b) adjudicated the 12/18/90 judgment so as to continue Respondents' longtime withholding of Petitioners' evidence implicating Judge Engel and the brother-in-law of this Suprme Court's Chief Justice, and (c) denied access of Petitioners' timely motion in extraordinary circumstances for a Rule 60(b)(6) evidentiary hearing for relief from the 12/18/90 res judicata summary judgment dismissal on ground of frauds upon the courts.

And there has been Respondent appellate judges Engel's and Danhof's denial of due process plus judicial misconduct predicated upon their extrajudicial conduct.

The county, state, and federal main decisionmakers were puppets to the conspiracies which raided Petitioner's Kandy Tapes & Records Corp., evaded Dominic DiGiavanni's federal taxes, disguised the three Johnson defendants, took Petitioner's total 1922-73 private properties for private and public use with no compensation, then interfered with Petitioner's and class of Petitioners' basic civil rights to cover up by way of Respondents' 1964-to-date chain of continuing false pretenses, frauds, and undue newsmedia-religious influence upon the courts in violation of the federal laws and Constitution.

"Bought and programmed" judges mischaracterized invalid res judicata-based motions in sophisticated violation of the Constitution which provides civil rights, not privileges, for nonlawyers.

The Constitution is by the people for the people. Not by the lawyers for the lawyers! Not by the judges for the judges. Not by any one religious group for that one religious group. And not by any one "mob of outlaws" for that one "mob of outlaws".

WHEREFORE, Pro se nonlawyers alleged Confidence Game victims of fiduciaries and their law firms request an Extraordinary Writ prohibiting such further mischaracterizing of motions grounded on invalid "no full and fair opportunity to litigate" res judicata summary disposition dismissal judgments and mandating (a) Rule 60(b)(6) federal relief from the December 18, 1990 thru July 9,

1993 federal court judgments, orders, and opinions; (b) post-12/18/90 federal courts' appeal costs to pro se nonlawyer alleged Confidence Game Victim Petitioner; (c) further fourth amendment complaint's proceedings in District Court #1:90CV175; and (d) federal district court and State probate courts concurrent 42 USCS § 1985 jurisdiction of Petitioner Victim's 1986 priority claim against the Respondent decedent's estate.

For the reasons set forth above, an extraordinary writ should issue to review at least the 1992-93 orders and opinions of the Court of Appeals in this matter.*

Dated: October 1, 1993.

Respectfully submitted,

Donald Edgar Johnson

DONALD EDGAR JOHNSON, In Pro Per
Counsel for Petitioners

*If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for the Sixth Circuit for redetermination in light of its August 27, 1993 investigation #93-6-37237 of Judge Engel's alleged judicial misconduct.

PETITIONERS' APPENDIX

I. The U.S. Court of Appeals Order and Opinion sought to be reviewed:

No. 92-1829
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON and Class of Pro Se Nonlawyer Alleged Confidence Game Victims,

Plaintiff-Appellant,

FILED
DEC 23 1992
Leonard Green, Clerk
(no entry date)

V.

O R D E R

RICHARD GORDON JOHNSON, jointly and severally; CARL ALFRED JOHNSON, JR., jointly and severally; CARL A. JOHNSON, SR., the Estate of, jointly and severally; THE LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK AND ROBB, jointly and severally; CULVER, LAGUE AND MCNALLY, jointly and severally; O'TOOLE, STEVENS, JOHNSON, KNOWLTON AND ROLF, jointly and severally; STATE OF MICHIGAN, jointly and severally; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C., jointly and severally; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge

Defendants-Appellees

II. TRUE original caption showing Judge Engel: 12/23/92 Order: BEFORE: KENNEDY and BATCHELDER, Circuit Judges, and ENGEL, Senior Judge.

III. FALSE original caption showing no Judge Engel per 3/10/93 Order:BEFORE: KENNEDY and BATCHELDER, Circuit Judges, and BROWN, Senior Circuit Judge

Plaintiff, Donald Edgar Johnson, a pro se Michigan citizen, moves for miscellaneous relief on appeal from three separate district court orders[n1] rejecting various pleadings filed subsequent to a final judgment entered December 19, 1990,[n2] dismissing plaintiff's civil action filed pursuasnt to 42 U.S.C. § 1985. Plaintiff also appeals an order from the Muskegon County Probate Court.[n3] Additionally, the defendants have filed motions to dismiss the appeal for lack of subject matter jurisdiction. The defendants also request costs and attorneuy fees. Plaintiff has filed as response. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Plaintiff initiated his civil action[n4]

against the estate of his father, his two brothers, several law firms, and a Michigan state court judge claiming that the defendants conspired against him through various judicial processes in the state and federal courts since 1974. The district court determined that plaintiff's claims were barred by res judicata and dismissed plaintiff's complaint for failure to state a claim.[5] This court affirmed the district court's judgment in an order filed July 29, 1991 and denied plaintiff's petition for rehearing en banc in an order filed September 2, 1991. On January 21, 1992, the United States Supreme Copurt denied certiorari.

Thereafter on April 27, 1992, the district court received a pleading entitled, "Emergency Motion For Change In Venue; And In The Alternative, To Alter The Order Denying A Rule 60(b)(6)

Evidentiary Hearing Re Defendants' 1990-1992 Frauds Upon The Courts. [n6]

On May 8, 1992, the district court entered an order rejecting the pleading for the reason that a final judgment had been entered dismissing plaintiff's action.[n8] On May 12, 1992, the district court received a pleading entitled, "Supplement To Reply To Petition To Determining Distribution Has Been Made. [n9] The district court rejected this pleading in an order entered May 22, 1992, also for the reason that a final judgment had been entered dismissing plaintiff's case.[n10] Finally, on May 26, 1992, the distict court received a pleading entitled, "Emergency Motion For Declaratory Judgment." On June 3, 1992, the district court entered an order rejecting this pleading for the same reason as stated in the prior orders of May 8, 1992 and May 22, 1992.

We construe this appeal as an appeal from three separate district court orders denying plaintiff relief sought pursuant to Fed. R. Civ. P. 60(b).[n11] An abuse of discretion standard applies to a decision rendered under Rule 60(b). In re Salem Mortg. Co., 791 F.2d 456, 459 (6th Cir. 1986); Smith v Secretary of Health and Human Services, 776 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 6, 7 (6th Cir. 1984) (per curiam); Reviewing courts will find an abuse of discretion in the denial of a Rule 60(b) motion only if there is a definite and firm conviction that the court committed a clear error of judgment. Davis v. Jellico Community Hospitao, Inc., 912 F.2d 129, 133 (6th Cir. 1990). A Rule 60(b) motion cannot be used as a substitute for an appeal,

and thus an appeal from an order denying Rule 60(b) relief does not bring up for review the underlying judgment. Browder v. Direct, Dep't of Corrections, 434 U.S. 257, 263 n.7 (1978); Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989).

Upon review, we conclude that the district court did not abuse its discretion when it rejected plaintiff's post-judgment pleadings. In each of the submitted pleadings, plaintiff attempted to relitigate issues previously decided adversely to him. A final judment has been entered dismissing plaintiff's action, that decision has been affirmed by this court and a petition for certiorari has been denied by the Supreme Court. Thus, no clear error of judgment on the part of the districtg court exists in this case.

Additionally, the order from the Muskegon County Probate Court is not appealable to this court.[n12] Thus, we do not review that appeal.

For the foregoing reasons, the defendants' motions to dismiss and request for costs and attorney fees are denied, plaintiff's motions for miscellaneous relief are denied, and the district court's orders of May 8, 1992, May 22, 1982, and June 3, 1992 are affimed pursuant to Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

IV. **IMPORTANT FOOTNOTES TO DECEMBER 23, 1992 ORDER:**

[n1] Should be thirteen (13) orders (4/16-7/13/92) rejecting various pleadings filed subsequent
[n2] to a final judgment entered December 19, 1990. It was **filed** December 18, 1990. dismissing plaintiff's civil action filed pursuant to 42
[n3] U.S.C. § 1985.
[n3] Should be plaintiff seeks concurrent jurisdiction
[n4] with, not appeal of probate court order.
[n5] Should be civil rights action.
[n5] District Court DID NOT dismiss for failure
[n6] to state a claim.
[n6] Should be "thereafter on March 11, 1992, district court received a pleading entitled,

"Emergency Motion For Evidentiary Hearing Re
n8 Defendants' 1990-92 Frauds Upon The Court".
Should be, On April 17, 1992, the district
n9 court entered an order rejecting pleadings.
Should be, "on May 12, 1992, the district court received a pleading entitled, "Supplement To 4/24/92 Emergency Motion For Change In Venue; And In The Alternative, To Alter The Order
n10 Denying A Rule 60(b)(5)(6) Evidentiary Hearing.
should be, The district court rejected a May 11, 1992 affidavit detailing exact page numbers of exhibits proving sworn facts pleading entitled "Supplement To 4/24/92 Emergency Motion For Change In Venue; And In The Alternative, To Alter The Order Denying A Rule 60(b)(5)(6) Evidentiary Hearing Re Defendants' 1990-92 Frauds Upon The Courts" in an order entered May 22,
n11 1992.".
Should be "appeal from thirteen," not three
n12 orders.
Plaintiffs did not seek an appeal of an order from probate court; rather, they sought concurrent 42 USCS § 1985 jurisdiction.

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V. **MANDATE:** ISSUED AS MANDATE, July 19, 1993
Costs: None

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VI. The March 10, 1993 denial of rehearing.

NO. 92-1829

UNITED STATES COURT APPEALS
FOR THE SIXTH CIRCUIT

Filed Mar 10 1993
LEONARD GREEN, Clerk
(no entree date)

DONALD EDGAR JOHNSON AND Class of
Pro Se Nonlawyer Alleged Confidence
Game Victims, Plaintiff-Appellant

V

Richard Gordon Johnson, et al,
Defendants-Appellees. O R D E R

BEFORE: KENNEDY and BATCHELDER, Circuit

Judges, and BROWN, Senior Circuit Judge

The appellant has petitioned the court to rehear its decision of December 23, 1992, affirming the orders of the district court denying appellant relief sought pursuant to Fed. R. Civ. P. 60(b). Subsequent to the filing of the petition for rehearing, appellant filed a petition for rehearing en banc, a motion to recuse Judge Engel, and a motion to amend the caption.

After careful consideration of the petition for rehearing, the panel concludes that it has not overlooked or misapprehended any point of law or fact in the order of December 23, 1992. It is therefore ordered that the petition for rehearing is denied.

Judge Engel recused himself when this case was originally heard December 11, 1992. Therefore, the motion to recuse is denied as moot. The petition for

rehearing en banc is denied on the ground that appellant did not file the requisite number of copies of the petition. 6th Cir. R. 14. The motion to amend the caption is denied.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

* * *

VII. The July 9, 1993 re-denial of rehearing:

NO. 92-1829
UNITED STATES COURT APPEALS
FOR THE SIXTH CIRCUIT

Filed Jul 9 1993
LEONARD GREEN, Clerk
(no entree date)

DONALD EDGAR JOHNSON AND Class of Pro Se Nonlawyer Alleged Confidence Game Victims, Plaintiff-Appellant

V

Richard Gordon Johnson, et al, Defendants-Appellees.

O R D E R

BEFORE: KENNEDY and BATCHELDER, Circuit Judges, and BROWN, Senior Circuit Judge

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing

en banc, the petition for rehearing has been referred to the original hearing panel.[n1]

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

[n1] The original panel included Judge Engel.

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VIII. The Erroneous 12/9/74 State Dismissal:

"FILED 1974 DEC 9 PM 2:44
S T A T E O F M I C H I G A N
IN THE CIRCUIT COURT FOR THE COUNTY OF MUS KEGON

* * *

DONALD EDGAR JOHNSON,
Plaintiff, File No. 73-7432-CK
v.
CARL ALFRED JOHNSONB, SR.,
et al,
Defendants.

J U D G M E N T

Donald Edgar Johnson
In Propria Persona

William F. McNally (P 17533)

Attorney for Defendants

At a session of said Court held in the County Building in the City of Muskegon County and State aforesaid, on the 9th day of December, 1974.

PRESENT: /S/ JOHN H. PIERCEY, CIRCUIT JUDGE

The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for Judgment at the end of plaintiff's case, the Court being fully advised in the premises, and the Court having made findings of fact and conclusions of law,

IT IS ORDERED, that defendants' Motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his complaint for the reasons set out in the opinion of the Court rendered in open court.

/S/ JOHN H. PIERCEY, CIRCUIT JUDGE

Countersigned: /s/ James C. Shields, Jr., Deputy

Clerk. Approved as to Form:

/s/ William F. McNally
William F. McNally, of
LANDMAN, HATHAWAY,
LATIMER, CLINK & ROBB
Attorneys for
Defendants
500 Hackley Bank Bldg.
Muskegon, Michigan 49443

Donald Edgar Johnson
Plaintiff
4984 Grand Haven Road
Muskegon, Michigan 49441

I HEREBY CERTIFY that this copy to be a true and correct copy of the original on file with the office of COUNTY CLERK. This Certified Copy VALID only When SEAL And RED SIGNAYURS Are Affixed. /s/ Margaret H. Greenwood, MUSKEGON COUNTY CLERK."

[Note: The above is typed on stationery printed on left side, "OFFICES OF LANDMAN, HATHAWAY, LATIMER, CLINK & ROBB -- MUSKEGON, GRAND HAVEN, AND FREMONT, MICHIGAN".]

IX. 5/6/83: Landman law firm fraud upon county trial court.

"[170]Dear Judge Pannucci: ... A review of your Circuit Court file will reveal that the judgment from which Plaintiff Johnson seeks relief was entered many years ago, and the full appellate process has been exhausted...Accordingly, this Court has no further jurisdiction in the matter..."

X. 5/10/83: Trial judge replacement #1 succumbed to Landman firm's 5/6/83 fraud on the Courts that the case was no longer pending (it was on appeal) and plaintiff exhausted appeals years ago and cancelled his scheduled 5/13/83 due process evidentiary hearing.

[84]"The Court has reconsidered the May 4, 1983 memorandum. It is therefore ORDERED that the May 10,

1982 Order signed by Judge Piercey is reinstated. The clerk is instructed to return all pleadings and fees. /s/ Ronald H. Pannucci, Chief Circuit Judge."

XI. 6/29/83: Trial judge replacement #2 ordered removal of Victim's preponderance of 1974 trial evidence from the record.

> "...[85] IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the Plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983, 12:00 o'clock noon; and he is to sign a prepared receipt therefore, or this Court will order them removed and/or destroyed in accordance with the General Court Rule so providing.../s/ Michael E. Kobza."

XII. 11/29/83 Danhof court of appeals (1) improperly failed to grant leave to appeal, and (2) erroneously ordered **independent** relief from 12/9/74 judgment action rather than provide appellate review of the evidence presented and remand to trial court for further **motion** for relief from judgment proceedings on the merits.

> "#50565[85,242] IT IS ORDERED ... DENIED for the reason that more than one year having elapsed from the time of judgment, plaintiff is required to file an independent action. GCR 1963, 528.3."

XIII. 2/15/84 Trial judge replacement #2 denied access to required independent action.

> "Trial judge replacement #2 wrote[86] felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson). 2-15-84. M. Kobza."

XIV. 6/20/86 Trial judge replacement #2 consolidated the 1973 case with the 1986 independent action, granted Culver + Parmenter

firms' verbal motion for res judicata summary judgment dismissal and dismissed both actions.

"#86-21207-CZ ... [88,225-230] IT IS ORDERED THAT Muskegon County Circuit Court Action 73-C-7432-CK be **consolidated** with the instant case 86-21207-CZ, and IT IS FURTHER ORDERED ... that plaintiff's claims be dismissed with full prejudice, but without costs..."

XV. 3/3/88: Danhof court of appeals affirmed consolidation and invalid dismissal of '73 and '86 actions.

D. Johnson v Richard, Carl-Jr, and Estate of CarlSr[253]
"defendants brought ... failure to state a claim ... we construe ... no genuine issue of fact..."

XVI. 4/25/88: County probate court invalid dismissal of Victim's claim against estate on ground of Danhof court's 3/3/88 invalid order affirming invalid 6/20/86 dismissal derived from Conspirators' verbal motion for res judicata summary judgment dismissal.

re Estate.[92] "IT IS ORDERED that the claim filed against said estate by Donald E. Johnson in ;the total sum of $1,500,000[n1] is hereby dismissed with prejudice pursuant to summary judgment by Opinion of the State of Michigan Court of Appeals, No. 92822, dated March 3, 1988..."

[n1] Wrong amount.[29] Should be $500,000 to $1,000,000.

XVII. 2/2-4/14/89: Michigan Supreme Court -- including now-Chief Justice M.F. Cavanagh who was on Danhof panel that repeatedly denied relief -- denied leave to appeal Danhof court decisions. ~~269-276~~

#83419[93,274,275] Failed to show both 73 C7432 and 86 21207 numbers due to Danhof court of appeals failures.

Not persuaded that questions should be reviewed by that court.

XVIII. 7/7/89: Danhof court of appeals failed to uphold "full and fair opportunity" requirement for applying res judicata.

> #108452.[257] D. Johnson v FMB Lumberman's Bank, Personal Representative of Estate, C. Johnson Sr, deceased, R.G. Johnson, C.A. Johnson, Jr., Randy Johnson, Darlynn Johnson: "... There are three prerequisites to the application of the res judicata doctrine: (1) there must have been a prior decision on the merits; (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action; and (3) both actions must be between the same parties or their privies..."

XIX. **THE FRAUDULENTLY OBTAINED ERRONEOUS DECEMBER 18, 1990 OPINION & JUDGMENT:**

> "The plaintiff's dossier also contains * * * eighty orders * * * the plaintiff's 'civil rights' complaint is simply his latest attempt to attack the judgment entered by the circuit court back in 1974. **The doctrine of res judicata prohibits such an attack.** Therefore, the defendants' motions to dismiss are granted and the plaintiff's fourth amended complaint is dismissed with prejudice." 12/18/90 District Court Opinion (entered 12/19/90).

> "DONALD EDGAR JOHNSON, Plaintiff, v. RICHARD GORDON JOHNSON et al., Defendants * * * In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's complaint is DISMISSED with prejudice. IT IS FURTHER ORDERED THAT ALL MOTIONS FILED BY THE PLAINTIFF ARE DENIED. IT IS FURTHER ORDERED that the Clerk of the

United States District Court for the Western District of Michigan is ENJOINED from accepting from the plaintiff any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. IT IS FURTHER ORDERED that the plaintiff is ENJOINED from filing any pleadings or documents seeki;ng to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. Failure to comply with this Order on the part of the plaintiff may result in a finding that he is in contempt of this Court. IT IS SO ORDERED. /s/ Benjamin F. Gibson, U.S. District Judge." 12/18/90 Dist. Ct. Judgment (entered 12/19/90).

XX. The Court of Appeals affirmed the improper erroneous 12/18/90 res judicata summary disposition dismissal:

"No. 91-1160
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

FILED JUL 29 1991
LEONARD GREEN,
Clerk

v.

O R D E R

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; THE ESTATE OF CARL A. JOHNSON, SR.; THE LAW FIRM PARTNERSHIP OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON AND ROLF; STATE OF MICHIGAN; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C.; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge,
Defendants-Appellees.

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

BEFORE: KEITH and NORRIS, Circuit Judges, and WEBER, District Judge.*

Donald Edgar Johnson, a pro se Michigan citizen, appeals the district court's judgment dismissing his action filed pursuant to 42 U.S.C. § 1985 for failure to state a claim. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Johnson sued the estate of his father, his brothers, several law firms, and a state court judge. Johnson alleged that the defendants had conspired against him during various state and federal court proceedings. The district court determined that Johnson's claims were barred by res judicata and dismissed the case for failure to state a claim. Johnson has filed a timely appeal.

Upon review, we determine that the district court properly dismissed Johnson's case for failure to state a claim. Construing the complaint in the light most favorable to Johnson, and accepting all the factual allegations as true, we determine that Johnson undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. Meader v. Cabinet for Human Resources, 902 F.2d 474, 475 (6th Cir.), cert. denied, 111 S. Ct. 182 (1990).

Accordingly, we affirm the judgment for the reasons set forth in the district court's judgment filed on December 18, 1990. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

*The Honorable Herman J. Weber, U.S. District Judge for the Southern District of Ohio, sitting by designation."

XXI. The Court of Appeals denied petition for rehearing:

NO. 91-1160 U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED SEP 27 1991 Leonard Green, Clerk

DONALD EDGAR JOHNSON
Plaintiff-Appellant,
V
RICHARD GORDON JOHNSON, ET AL,
Defendants-Appellees
BEFORE: KEITH and NORRIS, Circuit Judges; and

WEBER*, U.S. District Judge

The court having received a petition for rehearing enbanc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that 5the issues raised in the petition were fully considered upon the original submission and decision of the case.

Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
/s/Leonard Green, Clerk

[*Hon. Herman J. Weber sitting by designation from the Southern District of Ohio].

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XXII. The Supreme Court denied petition for certiorari to CA6, 940 F2d 660, 111 S Ct 2132, 115 LEd2d 44:

SUPREME COURT OF THE UNITED STATES
No. 91-947
Donald Edgar Johnson, Petitioner,
V
Richard Gordon Johnson, et al.
January 21, 1992

On PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals

for the Sixth Circuit, No. 91-1160.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Sixth Circuit.

IT IS ORDERED by this Court that the said petition be, and the same is hereby denied.

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XXIII. Supreme Court petition for rehearing denied; former decision, 111 LEd2d 539:

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

March 9, 1992

Mr. Donald Edgar Johnson
PO Box 5407
Muskegon, MI 49445

Re: Donald Edgar Johnson
v. Richard Gordon Johnson, et al.
No. 91-847

Dear Mr. Johnson:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Very truly yours,
/s/ William K. Suter, Clerk

==

XXIV. **THE VICTIMS' 3/10/92 MOTION THAT WAS NEVER PROVIDED ACCESS OR ENTERED ON DOCKET SHEET AT DISTRICT COURT BETWEEN 3/9 AND 3/15/93:**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON AND CLASS OF PRO SE NONLAWYER

ALLEGED CONFIDENCE GAME VICTIMS,

File No. 1:90-CV-175

Plaintiffs,

EMERGENCY MOTION FOR EVIDENTIARY HEARING RE DEFENDANTS' 1990-1992 FRAUDS UPON THE COURTS

V.

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR, THE ESTATE OF CARL A. JOHNSON, SR., THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB, CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C., THE STATE OF MICHIGAN, And ROBERT J. DANHOF, Michigan Court Of Appeals Chief Judge, Jointly And Severally,

Defendants.

_____/

NOW COME DONALD EDGAR JOHNSON AND CLASS OF PRO SE NONLAWYER ALLEGED CONFIDENCE GAME VICTIMS, plaintiffs, who pursuant to FRCP 9(b) and 60(b) emergency move the Court to provide an evidentiary hearing for determining if a continuing 1990-1992 chain of frauds upon the courts existed that procured and prolonged the December 18, 1990 Dismissal Judgment herein because:

1. On 3/21/90 and 6/22/90, Kevin B. Even appeared for three defendants, filed a black-covered dossier that "contains eighty orders that have been issued by seven different courts" which omitted certain significant orders, argued res

judicata, and moved for dismissal.

a. Between 3/22/90 and 6/25/90, all other defendants except the State and Judge Danhof, concurred and joined the filing of said "80 orders/7 courts" defendants' deceptive evidence, argued res judicata, and moved for dismissal.

2. Between 6/25/90 and 7/30/90, plaintiff Johnson and class of pro se nonlawyers filed (non-black-covered) dossiers of plaintiffs' evidence to the merits of their case.

3. On 12/5/90, plaintiffs moved at 8 AM for plaintiffs', not defendants', evidence to be placed on Judge Gibson's desk for the 8:30 AM final 12/5/90 hearing.

a. Plaintiff Johnson was assured that his evidence was placed on Judge Gibson's desk by 8:30 AM and he was not allowed in judge Gibson's chambers or near his courtroom desk between 8:30 AM and 8:40 AM as hearing was delayed 10 minutes.

4. On 12/18/90, Judge Gibson issued a dismissal judgment with prejudice based upon defendants', not plaintiffs', "80 orders/7 courts" black-covered dossier of evidence.

". . . The plaintiff, apparently to support

the merits of this action, has compiled for the court what appears to be all of the orders entered by this court and others in response to his quixotic attempts to have the original circuit court decision vacated.[1] * * * [1]The dossier contains eighty orders that have been issued by seven different courts * * * In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's complaint is DISMISSED with prejudice. . . ." Judge Gibson's District Court 12/18/90 Opinion and Judgment.

4. Had plaintiff Johnson filed a motion for reconsideration of said 12/18/90 Judgment, he would have filed a document seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. And the 12/18/90 Judgment threatened plaintiff Johnson with contempt of court if he filed such a document.

". . . IT IS FURTHER ORDERED that the plaintiff is ENJOINED from filing any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. Failure to comply with this Order on the part of the plaintiff may result in a finding that he is in contempt of this Court." 12/18/90 Judgment.

5. Between 12/18/90 and 7/29/91, said Kevin B. Even appeared in the Court of Appeals for the Sixth Circuit and masqueraded himself as appearing for three defendants-appell**ants** while really appearing for three defendants-appell**ees**. And this was an extrinsic fraud upon this district court and an intrinsic fraud upon the Court of Appeals which was objected to by plaintiff- appellant Johnson.

a. All of the other defendants-appellees participated in the prolonging of the 12/18/90 Judgment by intrinsic fraud upon the Court of Appeals. Though plaintiff Johnson filed a thorough 725-pages Joint Appendix that did not omit significant evidence to the merits of the case, the other defendants-appellees filed a deceptive separate thin Joint Appendix omitting significant evidence to the merits of the case quite similar to said "80 Orders/7 Courts" defendants' deceptive dossier of evidence. And the State and its Judge Danhof concurred and joined in the conspiracy by arguing res judicata for the first time.

b. Had defendants-appellees not committed their fraud upon the Court of Appeals, that Court would have scrutinized the **real** plaintiffs- appellants' 725 pages Joint Appendix rather than defendants-appellees' deceptive incomplete joint appendix. And the Court of Appeals would not have duplicated Judge Gibson's misapprehension that the "80 Orders/7 Courts" defendants' 3/21/90- dossier was plaintiffs' 6/25/90-7/30/90-dossier of evidence and that, upon careful examination of defendants' dossier, plaintiff Johnson's claims were barred by res judicata, failure to state a claim, and because he "undoubtedly can prove no set of facts in support of his claims that would entitle him to relief".

6. Between 7/21/91 and 3/9/92, all defendants further prolonged the 12/18/90 dismissal by refusing to even appear, refusing to respond, or failing to admit to the above sophisticated 1990-1991 frauds upon the courts in the busy Supreme Court of the United States which, in an interlocutory decision, declined to review the time-taking sophisticated false pretenses/frauds upon the courts civil/

criminal matter where the appropriate U.S. District Attorney John A. Smietanka declined to intervene and was then appointed to replace the Court of Appeals for the Sixth Circuit judge Albert J. Engel non-judicially deeply involved in defendants' coverup of Dominick Giovanni's concealed ownership of the nightclub land and defendants' illegally using plaintiff Johnson to evade substantial federal taxes and interest as proved in the Muskegon County Register of Deeds files discovered in 1982 by plaintiff Johnson.

7. By holding an evidentiary hearing for determining whether the frauds upon the courts existed, this Court would be providing a "full and fair opportunity" for the litigation of this claim that the 12/18/90 Judgment was procured and prolonged by a continuing 1990-1992 chain of frauds upon the courts which was a continuation of defendants' 1964-1989 chain of continuing false pretenses and frauds upon the courts.

a. Plaintiffs' filing of an independent action would unfairly prolong proceedings and result in manifest injustice to plaintiff Johnson and a class of pro se nonlawyers whose state trial

court evidence was unconstitutionally withheld from a higher court's appellate review.

b. The attached 14-pages Table of Contents to plaintiffs' said 725 pages Joint Appendix helps to simplify and distinguish between defendants' deceptions and plaintiffs' truths-backed-by- evidence. And it provides a fair opportunity for defendants' response to this motion prior to requested evidentiary hearing.

8. There was a fabrication of plaintiffs' evidence between 8 AM on 12/18/90 and this date, 1992. And attorney Kevin B. Even is implicated as the chief conspirator involving all defendants.

> "**Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. * * * This rule does not limit the power of a court to . . . set aside a judgment for fraud upon the court. . . " Fed.Rul.Civ.Proc. 60(b)

> "If attorney was implicated in fabrication of evidence by party, such implication could constitute fraud upon court." United States International Tel. & Tel. Corp. (1972, DC

Conn) 349 F Supp 22, affd without op 410 US 919, 35 L Ed 2d 582, 93 S Ct 1363.

9. A copy of this emergency motion is being mailed to the office of the U.S. District Attorney, Grand Rapids, Michigan as if the United States may wish to join plaintiffs' seeking justice against defendants' continuing torts against plaintiffs, the courts, and the United States.

10. I certify under penalty of perjury that the foregoing facts are true and correct. Executed on March 10, 1992.

WHEREFORE, Plaintiffs emergency move the Court (A) to immediately request the certified records of Court of Appeals for the Sixth Circuit No. 91-1160 and the Supreme Court of the United States No. 91-847 be transmitted to this District Court, (B) to issue an order compelling an evidentiary hearing for determining if the continuing frauds upon the courts existed between 8 AM, 12/18/90 and this date, 1992, and (C) any other relief that would provide plaintiff Johnson and class with a "full and fair opportunity" to litigate their civil rights 42 USCS § 1985(2)(3), 28 USC § 1331, FRCP 8(a)(1), U.S. Const. Amends. 1,5,14 original civil

rights action seeking Injunctive Relief and Damages for defendants' 1964-1989 taking a Michigan resident citizen nonlawyer's total 1922-1973-acquired private properties and liberties for private and public use without any compensation or basic fundamental constitutional entitlements in State courts.

Respectfully submitted.

Dated: March 10, 1992.

DONALD EDGAR JOHNSON, In Pro Per
Counsel for Plaintiffs
184 Cherry Ct. and 400 Causeway,
P.O. Box 5407
Muskegon, MI 49445

* * *

NOTICE OF HEARING

This emergency motion will be heard at the time and place set by the Court. /s/ Donald Edgar Johnson * * *

PROOF OF SERVICE * * * I, Donald Edgar Johnson, certify that I am Counsel in Pro Per for the above Plaintiffs, and that on March 10, 1992, I served a copy of the attached Emergency Motion For Evidentiary Hearing Re Defendants' 1990-1992 Frauds Upon The Courts on each of the parties required to be served, as follows:

On Richard Gordon Johnson, Carl Alfred Johnson, Jr., and * * * I certify under penalty of perjury that the foregoing is true and correct. Executed on March 10, 1992.

Dated: March 10, 1992. /s/ DONALD EDGAR JOHNSON

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XXV. 4/16/92 (entered 4/17/92) District Court Order Rejecting Pleadings:

"DONALD EDGAR JOHNSON, et al, Plaintiffs, vs. RICHARD GORDON JOHNSON, et al, Defendants. ORDER REJECTING PLEADINGS. Judgment in this action was entered December 18, 1990 granting defendants' motion to dismiss the complaint. Plaintiff subsequently appealed to the United States Court of Appeals for the Sixth Circuit and the decision of this court was affirmed. The Supreme Court thereafter apparently denied plaintiff's petition for a writ of certiorari, and on March 9, 1992, denied plaintiff's petition for rehearing. * * * Such motions when predicated on 'fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party,' must be made within one year. Rule 60(b), FRCP."

XXVI. The 5/7/92 (entered 5/8/92) District Court Order:

> "ORDER REJECTING PLEADING * * * PLEADING TITLE/ FILER: Filed by plaintiff - Emergency motion for change in venue; and in the alternative, to alter the (4/16/92) order denying a Rule 60(b)(5)(6) evidentiary hearing re defendants' 1990-92 frauds upon the courts with brief. * * * REASON: A final judgment has been entered dismissing this action and the case is no longer pending in this or any other federal court. * * * /s/ Benjamin F. Gibson, Chief Judge."

XXVII. The 5/21/92 (entered 5/22/92) District Court Order:

> "ORDER REJECTING PLEADING * * * REASON: ** The cover letter refers to case number 1:90-cv-175. The pleading refers to file number 86-59607-SE of State of MI Probate Court, Muskegon County. Case number 1:90-cv-175 is closed. A final judgment has been entered dismissing this action and the case is no longer pending this court.* * * /s/ Benjamin

F. Gibson, Chief Judge".

XXVIII. The 6/2/92 (entered 6/3/92) District Court Order:

"ORDER REJECTING PLEADING * * * Plaintiff's emergency motion for declaratory judgment * * * REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court. /s/ Benjamin F. Gibson, Chief U.S. District Judge."

XXIX. **RELATIVE DOCKET SHEETS:**

2/3/92 112 RE-ISSUED MANDATE from Sixth Circuit Court of Appeals showing no costs; record already ret'd (dmh) [Entry date 02/07/92][n1]

4/16/92 113 ORDER (2 pags) by Chief Judge Benhjamin F. Giobson rejecting pleadings, Pltf's Emergency Motion and four(4) supplements to his emergency motion are rejected because a final judgment has aslready been entered dismissing this action and the case is no longer pending in this or any other federal court (cc: all counsel) (wrm) [Entry date 04/17/92]

[n1] NOTE THERE IS NO ENTREE FOR VICTIMS' 3/10/92 RULE 60(b) MOTION.

XXX. **"SWITCHED DOCKET ENTREES:**

1/11-3/4/93 **TRUE:**
12/23/92 ORDER filed : AFFIRMED, appellees' motions to dismiss and requests for costs and attorney fees are denied, plaintiff's motions for misc. relief are denied, pursuant to local rule 9(b)(3), decision not for publication pursuant to local rule 24 [92-1829]. Cornelia G. Kennedy, Circuit Judge, Alice M. Batchelder, Circuit Judge, **Albert J. Engel**, Senior Judge. (stj) Docket as of January 11, 1993 1:10 pm Page 6; January 28,

1993 8:27 am p6; and **March 4, 1993** 12:51 pm p 5. (Emphasis added).

7/19/93 **FALSE:**
12/23/92 ORDER filed : AFFIRMED, appellees' motions to dismiss and requests for costs and attorney fees are denied, plaintiff's motions for misc. relief are denied, pursuant to local rule 9(b)(3), decision not for publication pursuant to local rule 24 [92-1829]. Cornelia G. Kennedy, Circuit Judge, Alice M. Batchelder, Circuit Judge, **Bailey Brown**, Senior Judge. (stj) Docket as of **July 19, 1993** 4:52 pm p 7. (Emphasis added).

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XXXI. DEPUTY CLERK'S 2/17/93 LETTER CHANGING 12/23/92 ORDER'S ENGEL CAPTION TO **NON**ENGEL CAPTION:

> "2/17/93 LETTER SENT by stj to all counsel with corrected copy of 12/23/92 order for this appeal showing panel as Kennedy, Batchelder, and Brown. (Judge Engel should not have been on first order) [7231921] . (stj)" Docket Sheet as of March 4, 1993 12:51 pm page 6.

XXXII. 8/27/93 Investigation of Judge Engel's alleged 1992-93 judicial misconduct:

> "This will acknowledge receipt of your complaint of judicial misconduct against U.S. Circuit Judge Albert J. Engel. ... assigned No. 93-6-372-37. ... copy sent today to Chief Circuit Judge Gilbert S. Merritt. ..." 8/27/93 letter to victim from U.S. Court of Appeals for 6th Circuit Office of Circuit Executive, James A. Higgins.

XXXIII. MISCELLANEOUS

"All person born * * * in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Const. Amend. 14.

"Relief from Judgment or Order * * * .1 Clerical Mistakes * * * .2 Defendant Not Personally Notified. * * * .3 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. * * * (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party * * * or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment order or proceeding was entered or taken. * * * This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment * * * or to set aside a judgment for fraud upon the court. * * * and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." GCR 1963, 528.3. (Emphasis added).

"A fraud is perpetrated on the court where some material fact is concealed from the court or some material misrepresentation is made to the court: where such a fraud is alleged, the court must conduct an evidentiary hearing to determine whether such fraud exists." Valentino v Oakland Sheriff (1984) 134 Mich App 197, 351

NW2d 271, 422 Mich 858. (Emphasis added).[52]

"That the wrondoer gets the property in two steps rather than one where a partnership with his victim is formed should not absolve him of the crime of obtaining money or property by false pretenses where the false pretenses continued to operate up to the moment of his wrongful appropriation of the partnership assets contributed by his victim." People v Jones (1950) 224 P2d 353,357.[52]

"**Appeals by Right and by Leave.** * * * .4 Delayed Appeal * * * (2) Where timely appeal would have been of right, application for delayed appeal need not be accompanied by settled statement of facts but shall affirmatively show, by statement of facts and brief, that there is merit in the claim of appeal and, by affidavit of facts, that the delay was not due to appellant's culpable negligence. The application shall be noticed for hearing as motion. Any other party may file oppsing statement, brief and affadavits..." GCR 1963, 806.4(2).[49]

"**SUMMARY DISPOSITION** * * * (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: * * * (8) The opposing party has failed to state a claim on which relief can be granted. * * * (10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(8)(10).

12 Frauds Upon The Courts.[118]

DiGiavanni $25,000-$50,000 federal tax evasion using Petitioner 1965-71 by Landman firm's V.S. "Sam" Laurin.[140]

"If two or more persons in any State * * * conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; * * * If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectlty, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons with such State or Territory from giving or securing to all persons with such State or Territory the equal protection of the laws * * * whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators." 42 USCS § 1985(2)(3).

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USC § 1331.

"A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third party claim shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it." FedRulesCiv Proc 8(a)(1).

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." FRCVP 9(b).

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 USC § 1651.

"Courts of appeals; certiorari; certified question cases in the court of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." 28 USC § 1254(1).

"Opportunity for full and fair litigation * * * includes full and fair **evidentiary hearing**." Gamble v State of Oklahoma (1978 CA Ok) 583 F12d 1161. (Emphasis added).

"State and federal litigations are intended to be supplemental and cumulative." Amer. Pharmaceutical Ass'n v U.S. Dept. of Justice, Antitrust Div'n (1971 DC Mich) 344 F Supp 9, affm'd 467 F2d 1290.

"It may be laid down as the general rule that where the power of court of original jurisdiction to set aside a judgment on the ground of fraud is properly invoked, such power is not affected by the fact that the judgment has been * * * affirmed by a reviewing court." Louisville & N.R. Co. v Paynter (1907) 125 Ky 520, 1091 SW 935.

Solicitors of stock in a corporation never formed are liable to subscribers for the amount invested. LeZontier v Shock (1977) 78 Mich App 324.

"The doctrine of res judicata does not apply to an interlocutory order even if the order was affirmed on appeal." U.S. v Stonehill (1976 DC CA) 420 F Supp 46.

1964-90 FACTS

[See 1990-93 facts at page 10 herein]

Petitioner's dilemma began when members of the catholic religion became boosters of Petitioner's career and a gang of its members, GE's NBC's RCA's Chicago RCA recording studios' "insiders", began skimming and raiding non-catholic Petitioner's phono records corporation/ music publishing company the very moment that he brought his non-RCA-recorded master stereo tapes into Chicago RCA studios for dubbing Petitioner's rhythm tracks onto them about 1958-60 for phono albums Volumes 1 and 2 of "Organ With A Beat!": When Petitioner was provided inferior

dubbing equipment in an attempt to force him to bring his special musical instruments into their studio as was done on his Volume 3, "Organ With A Beat!" when he produced his "Five Foot Two" hit record.[172]

In 1960, Petitioner presided over his Kandy Tapes & Records Corp. (Indiana-Amer.Fed.Musicians) and Kandy Music Publishers (B.M.I.) with phono record "Five Foot Two/Sweet Georgia Brown" on top 10 charts, including Billboard, and three albums pioneering stereo "King Of Organ With A Beat" music protected by Petitioner's copyright[174] with worldwide distribution.[172,420-423] Indianapolis, Chicago, New York, and Hollywood RCA pressed and shipped merchandise per Petitioner's instructions; but it became apparent that insiders were shipping dual quality merchandise and secretly billing Candee or Candy record companys, inter

alia - rather than Kandy Records -- set up to skim off profits and squeeze Kandy merchandise from competing with insiders' productions. The Respondent ex-roman catholic priest and realtor -- with brother a Milwaukee bar owner -- wined and dined Petitioner, his wife, mother, and Respondent father in Ft. Lauderdale where Petitioner was entertaining nights at another Milwaukee bar owner's wintertime nightclub and promoting days in his mobile home/office. Petitioner's then-wife who Petitioner caught cheating the 1954 non-catholic Muskegon, Michigan marriage during its first month and who many times threatened to desert, mysteriously caused trouble with hired help while refusing to pinch pennies and promote the hit record; then took the children, deserted her husband, lived in her mother's Pennsylvania home (secretly with another man), deserted her interest in the phono

records and music publishing companies, drew Petitioner's financial support for two years, and filed for a Pennsylvania divorce claiming that it was Petitioner who deserted the marriage.

By April, 1962 the appropriate Pennsylvania county sheriff gave instructions for legally taking full custody of son-5 and daughter-6 and Petitioner with his attorney gathered evidence to prevent abusive wife from her attempt to take marriage property by fraud on Pennsylvania courts. In conference with the two opposing attorneys, Petitioner was discouraged from further time and expense fighting the fraud since the evidence was so overwhelming that she couldn't prevail. (That 1962 Paul and Dorothy Schultz affidavit with attorney witness was presented to the 1974 Muskegon Muskegon Circuit Court 73 C7432 CK trial). The ex-priest-realtor with Sun Agency

offices in Florida and Michigan and a Polish accent attempted to sell Dominic DiGiavanni's federal tax-laden Muskegon Heights nightclub #1 for $100,000.

In 1964-67, the three Johnson Respondents lured Petitioner off the road and gainful steady $450/week nightclubs employment with promise of a "better way of life". The ex-priest conspired with Petitioner's youngest brother, Respondent Richard Johnson, and the other joint and several Respondents, to <u>set up</u> the Petitioner in a viscious Confidence Game. He hired attorney Thomas J. O'Toole, not attorney Engel, to make the **<u>first</u>** perpetration of the Respondent three Johnsons' disguise on January 6, 1965[530, 540] as he was having O'Toole's law firm set things up for Respondent Richard to acquire financing of machines for defense contracts by pretending not to have joint venture liability of a $150,000 nightclub

purchase within his new Johnson Mold & Mfg. Corp.[530-532] U.S. Court of Appeals Judge Albert J. Engel[516] was retained by the three Johnsons and their privies in his Engle & Engel law firm partnership -- now known as Parmenter O'Toole corporation herein -- who wanted to become a powerful judge and who prepared, approved, and possessed the **unlawful** agreements[462,476,478,523-540,566,580] **at the heart of** Respondents' seven intertwined Confidence Game conspiracies: (1) to raid, then divide and conquer (steal) Petitioner's phono records-music publishers copyrighted private properties;[542,543] (2) to hide DiGiavanni's ownership and evade his $25,000-$50,000 federal taxes on his nightclub #2 land;[140,478,479] (3) to acquire Petitioner's power of attorney[393] and disguise the three Johnsons Respondents 15 years nightclub-phono records joint venturers as 3 years

moneylenders to Petitioner with mortgage on the venture's jointly-purchased DiGiavanni nightclub #2 land for security; (4) to solicite Petitioner to invest his total private properties, including his Indiana corporation, in the Michigan incorporation of the nightclub-phono records venture that would never be formed; (5) to have joint and several Respondents use the unlawful Engel 1964-67-drafted and possessed agreements plus Respondent decedent's deception to obtain Petitioner's 1970 Power of Attorney for stealing Petitioner's total 1922-73-acquired private properties including 5½ years-100 hours weekly wages for operating/entertaining a **public** nightclub without any working capital or appropriate refinancing; (6) **to interfere with Petitioner's civil rights**; and (7) to dismiss Petitioner's 1986 priority claim, distribute, and close the Respondent father-partner's estate

prematurely before the courts assess any liability in payment of decedent's share of Petitioner's monumental damages.

During 1969, Respondent Fenton "Bud" Kelley and con artist William F. Krause burglarized Petitioner's San Diego-stored mobile home-office plus Musikist nightclub locked storage areas for stealing physical assets of Kandy Tapes & Records Corp. and Kandy Music Publishers. Kelley sabotaged/stole Petitioner's professional stereo recording/playback equipment. [Kelley is now owner-manager of Channel 40 TV Station in Norton Shores, near Muskegon, which was recently granted a license to join the cable TV network to 40,000 homes made possible by said Judge Kobza's special court rulings].

By 1973, those unlawful agreements drafted by Judge Engel were used by Respondents to take Petitioner's total 1922-73-acquired private properties under

false pretenses. The three Johnsons' "moneylender" and "we'll form a fair corporation" 1964-70 false pretenses operated right up to 7/27/70 when Petitioner succumbed and handed everything over to the decedent at a meeting of the four Johnsons. See People v Jones. [34a] Petitioner and his minor children had to go on public workfare while mitigating damages from the burglarized mobile home/office stolen under false pretenses of a forthcoming sheriff's lien sale. But neither state or federal prosecutors would prosecute.[106] The Respondent Parmenter law firm held up Petitioner's filing a civil suit for over six months by pretending they might take it. The individual attorney Derizinski closest to the matter became a State senator shortly afterwards.

Between 1973 and 1977, Petitioner filed his civil suit against the three

Johnson Respondents.[30] The Confidence Game victim Petitioner was provided a seven scattered partial days' **unfair 1974 trial with a "bought and programmed" trial judge**'s erroneous 12/9/74 dismissal judgment of no cause for action,[220] and was denied a 12/30/74 hearing to settle facts because Culver firm's attorney William F. McNally failed to show up with or without the three Johnson defendants and the judge didn't keep his promise to reschedule the hearing and never filed his written settled facts until 19**79** with the "Chief Judge Danhof" court of appeals. Petitioner was denied materials necessary for a timely or delayed appeal of right and was required to purchase a $5,000 full transcript of trial court proceedings though he was on public workfare picking up trash and weeds at the city and county buildings on heels of NO COMPENSATION for 5½ years 100 hours (7 days) per week

entertaining nightly and operating Muskegon's finest Musikist "cocktails & dancing" nightclub and Drive Thru grocery store with special attraction-seating up to 400 served by 5 bartenders and 13 waitresses.[95,161,235]

> "On 9/4/75, plaintiff filed proof of his being single, broke, living alone, and constantly seeking meaningful employment to qualify for Muskegon public workfare #K6133244A and raise $5,000 transcript cost. Defendants' counsel received a copy as did trial court; **but the Court of Appeals #22496 motion mysteriously disappeared from that court's files per 10/7/81 affidavit**/motion. Also see Fraud Upon The Court #11, related Court of Appeals #108452 re 5/9/89 Supplement p 3-7. Also note that plaintiff's Soc. Sec. #382 14 7430 is erroneously printed 384 14 7430 on T 10/3/74 p 12 in the county where a "Bernie" had been receiving public welfare by using plaintiff's Soc. Sec. number before plaintiff applied for assistance during 1970 for the first time." Pet'n for Certiorari to "Danhof" Mich. App. Ct., S. Ct. #88-2116, p 17.[82]

> "IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the **trial** court." "Danhof" state court of appeals 2/5/76 Order.[80]

At a time when proof of being on public workfare was "lost" in the court of

appeals, a two judges panel, not three, kept insisting NO suspension or waiver of transcript fees.[250] (See Mich App Ct #22496, Dist. Ct. #G76-599 CA6, U.S. App. Ct. CA6 #77-1346, S.Ct. #75-6857, and S.Ct. #77-6941).

On October 5, 1978, Petitioner filed his motion for stay of the February 5, 1976 Court of Appeals #22496 order:

> "Contrary to defendants' refusing-12/30/74 to attend hearing to settle statement of facts and re-motion-10/13/75 for dismissal, plaintiff-appellant always has been and still remains unable to provide the required $4,000 cash in advance for transcript certificate fee whether on or off public welfare... AFFIDAVIT ... 2. That the reason for this further attempting to take appeal is that his right to materials necessary for reasonable access to this appellate court and due process was abridged by this court's Order-2/5/76, caused by defendants-appellees and their huge tortfeasor unqualified law firm partnership's refusal to attend trial court Hearing-12/30/74 to settle statement of facts and subsequent influence and frauds that he was not without $4,000 advance cash for required full transcripts whether on or off public welfare .. on heels of their influencing a very unfair trial and false pretense Judgement-12/9/74. 3. That the delay in further attempting to take appeal was not due to his culpable negligence, but was caused by the fact that he is a resulted indigent in pro per who has

had great difficulty against near-insumountable odds. 4. That affiant desires to resume appellate proceedings in this court, but, due to indigency, remains unable to pay the $4,000 cash in advance for 'the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed **in the trial court**" per said judgment-2/5/76. 5. That he was on public welfare 9/75 to 4/78 and, though currently earning $120 gross weekly since 4/78, he still cannot obtain the required $4,000 cash in advance to trial court stenographers. And defendants-appelles fraudulently caused him to be currently thousands of dollars in debt with nightclub creditors." Petitioner's 10/5/78 motion to "Danhof" Court of Appeals #22496.

On November 13, 1978 to January 8, 1979, Judge Michael F. Cavanaugh was on Chief Judge Danhof's panel that denied the above motion for stay and a lengthy motion for disqualification of Landman law firm.[236-238] [Judge Cavanagh is 1993 Chief Justice of the Michigan Supreme Court #97521 which should take concurrent jurisdiction of this 42 USCS § 1985 civil rights action against the Estate, et al.]

After bootstrapping himself off workfare ($120 weekly, 1978 to $500 weekly,

1982) as one man orchestra-musical entertainer)[172] and properly piecemeal filing the full transcript plus documents, Petitioner was denied a delayed appeal of right on the "Danhof" state court of appeals' grounds that it was improperly filed in the wrong court and too late.[82]

> "[P]laintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974 * * * IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction * * * His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts **with this court**. See order dated February 5, 1976. Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979." Pet'n for Cert. to "Danhof" Mich. App. Ct., S. Ct. #88-2116, p 9a.[82]

During 1982 trial court hearings,[126] trial Judge Piercey -- who had ruled that the three Johnson were moneylenders before the 1974 judgment -- ruled that they were money givers to Petitioner.[127]

In April, 1983, said "bought" county trial judge (Piercey) resigned on heels of Petitioner's two and one-half hours hearing (Petitioner's $250 cost of transcript) in nearby Ottawa county for his disqualification.

On May 6, 1983 as Petitioner's civil case was on appeal, Respondent Landman law firm lied to the trial judge replacement #1, (Pannucci, who had never seen the evidence) that Petitioner had fully litigated his case and exhausted the appellate process years ago.[114,170,705] As a result, Petitioner was provided NO May 13, 1983 scheduled due process-equal protection evidentiary hearing for his motion for determining if the December 9, 1974 Judgment was procured and prolonged by extrinsic frauds upon the courts. GCR 1963, 528[34a] which is now MCR 2.612.

By July, 1983, there was a trial judge replacement #2 (Kobza) -- whose attorney

brother James Kobza was being retained for transfering the Musikist $31,000 liquor license to another location -- had joined trial judge replacement #1 in succumbing to Landman firm's May 6 said fraud upon the courts, redenied Petitioner's motion for relief from the 1974 Judgment that was procured and prolonged by the three Johnsons and their Landman law firm's a/k/a Respondent Culver law firm's frauds upon the court, and ordered Petitioner to remove his 1974 trial evidence from the record and custody of Muskegon County Courthouse where it had been "lost" for weeks or months and nobody knew where it was. And the Respondent Culver law firm split from the Respondent Landman firm taking key attorneys to this case with it; i.e., Fred C. Culver, Jr., William F. McNally, and William Newman.

On November 22, 1983, the "Danhof" court of appeals improperly did not grant

leave to hear the appeal on the original (with evidence) record and improperly interpreted Michigan's GCR 1963 528.3[34a] [resembling FRCVP 60(b)(6)] by ordering Petitioner to file an **independent action** rather than remand to county trial court for a due process evidentiary hearing of the 5/3/83 **motion**.[242]

> "Record on Appeal. (A) Content of Record. Appeals to the Court of Appeals are heard on the original record. (1) Appeal from Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, **and the exhibits introduced**." MCR 7.210. (Emphasis added).

> "In this cause plaintiff-appellant has filed an application for rehearing of this Court's order of September 23, 1983 * * * denying the application for leave to appeal * * * IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for the reason that more than one year having elapsed from the date of judgment, **plaintiff is required to file an independent action**, GCR 1963, 528.3." Michigan Court of Appeals 3-judges 11/22/83 order.[242] (Emphasis added).

During February, 1984, the ex-priest and realtor was on the list of defendants in the "Danhof" court improperly-mandated

independent relief from 1974 judgment action which replacement judge #2 denied access to trial court, stating that only the prosecutor could file a criminal complaint. But no criminal action was ever filed by any prosecutor.

On August 29, 1985 (quoting from Petitioners' 725 pages 1991 Joint Appendix within court of appeals 92-1829 record):[95]

> "On 8/29/85 and after Michigan appellate courts declined to review trial court's denial of an evidentiary hearing, dismissing the motion, removing the evidence, and refusing to file the required independent action, Petitioner, who had petitioned this Court in 1976, 1978, and 1982 for interlocutory decisions, wrote to U.S. Supreme Court #85-357: -
>
> '1. DEFENDANTS-APPELLEES' COUNSEL WAS A 'FEDERAL TAX EVADING CONFLICTING INTEREST' COUNSEL.
>
> 2. WHEN BONA FIDE INDIGENT PLAINTIFF-APPELLANT ACTED **WITHIN A REASONABLE TIME** IN FILING SWORN ALLEGATIONS...THAT DEFENDANTS-APPELLEES AND THEIR FEDERAL TAX EVADING CONFLICTING DEBTOR-CREDITOR INTEREST COUNSEL PROCURED AND $9\frac{1}{2}$ YEARS PROLONGED THE TRIAL COURT DISMISSAL BY FRAUDS UPON THE COURTS AND APPELLATE COURTS MANDATED THAT PLAINTIFF FILE AN INDEPENDENT ACTION, TRIAL COURT SHOULD ACCEPT FEE AND BELATEDLY FILE, RETROACTIVE TO ATTEMPTED FILING DATE, PLAINTIFF-APPELLANT'S TIMELY GRIEVCANCES/ REQUIRED GCR 528.3 INDEPENDENT ACTION.

3. PLAINTIFF-APPELLANT DID TOLL A 2 YEARS STATUTE OF LIMITATIONS CONCERNING A CLAIM WHEN HE TIMELY ATTEMPTED TO PROPERLY FILE HIS REQUIRED INDEPENDENT ACTION, CERTIFIED MAILED COPIES TO EACH DEFENDANT, AND SOUGHT APPELLATE COURTS' MANDATING TRIAL COURT TO FILE THAT ACTION.

4. IT IS NOT LEGAL FOR 3 RICH MEN, THEIR INFLUENTIAL CONFLICTING INTERESTS LAW FIRM, AND THEIR REALTOR TO TAKE A CITIZEN'S TOTAL MONEY AND PROPERTIES, 2 LIMITED POWER OF ATTORNEYS, 8 YEARS' WAGES, COURT COSTS, AND CONSTITUTIONAL RIGHT OF DUE PROCESS-EQUAL PROTECTION-PARENTAL RIGHTS-JUST COMPENSATION UNDER FALSE PRETENSES, BREACH OF CONTRACT, FRAUDULENT CONVERSION, LIBEL & SLANDER, AND FRAUDS UPON THE COURTS -- WHILE USING HIM AND HIS ASSETS TO EXECUTE-COVERUP A $25,000-$50,000 FEDERAL TAX EVASION AND HIDDEN OWNERSHIP OF A LARGE NIGHTCLUB/ BINGO PARLOR/FLEA MARKET, AND

5. A 1964-1972 TOTALLY WIPED OUT-STILL FINANCIALLY EXHAUSTED 62 YEARS OLD-5 YEARS COLLEGE TRAINED-EX U.S. ARMY OFFICER PLAINTIFF-APPELLANT CANNOT BE DEPRIVED OF A TRIAL COURT HEARING OF HIS TIMELY MOTION OR A TRIAL COURT FILING OF HIS TIMELY APPELLATE COURTS-MANDATED INDEPENDENT ACTION FOR A NEW TRIAL ON GROUND OF OPPONENTS' SEVERAL SIGNIFICANT FRAUDS UPON THE STATE AND FEDERAL COURTS DURING THIS 12 YEARS NONSTOP CIVIL CASE WHERE HE, WITH AND WITHOUT AN ATTORNEY, WAS DENIED (1) A JURY, (2) A FAIR TRIAL, (3) WAIVER OR SUSPENSION OF APPEAL COSTS, (4) A HEARING TO SETTLE FACTS, (5) A TIMELY APPEAL OF RIGHT, (6) A DELAYED APPEAL OF RIGHT THOUGH HE BELATEDLY EARNED THE $5,000 AND FILED THE REQUIRED FULL TRANSCRIPT, (7) DISQUALIFICATION OF TRIAL JUDGE AND OPPOSING FEDERAL TAX EVADING-FOR-SECRET-CLIENTS CONFLICTING INTERESTS COUNSEL,

AND (8) ADDING HIS ASSISTANT ATTORNEY, A COURT STENOGRAPHER, AND HUGE INFLUENTIAL OPPOSING COUNSEL AS NECESSARY DEFENDANTS -- AND WHERE THE HIGHER COURTS NEVER ONCE TOOK DELIVERY OF THE FULL MEANINGFUL RECORD OF THE CASE FOR A MEANINGFUL REVIEW -- AND WHERE A COURT OF APPEALS 3 JUDGES PANEL REFUSED TO EVER ALLOW THEIR NAMES TO APPEAR ON THEIR ORDERS OF DEPRIVATION -- AND WHERE THE STATE SUPREME COURT REFUSED JURISDICTION!

* * *

> And plaintiff raised a federal question by arguing that not even the U.S. Congress can make a law respecting the right of the people to petition the government for a redress of grievances. Const. Amend. 1. And the Michigan Court of Appeals' unknown judges refused to reverse trial court's refusal to file plaintiff's 'required' independent action." Petitioner's Petition For Certiorari At U.S. Supreme Court #85-357.

In January, 1986 as Petitioner was 1984-86 continuously seeking access to file a "Danhof" appellate court improperly-required independent action for relief

from the 1974 county trial court dismissal judgment, Petitioner's father-joint venture partner died owing Petitioner his share of damages from said 1964-86 Confidence Game conspiracy via Petitioner's pending Muskegon Circuit Court #73-7432 CK. He had made out his last Will in 1979 -- when he was still on a "never-wound-down" 1964-80 nightclub-phono records joint venture with Petitioner -- that reduced Petitioner's previous 25% to 10% as if following the directions of the conspiring law firms herein. (Petitioner's children and heirs were listed as decedent's niece and nephew rather than grandaughter and grandson).

On February 3, 1986, the "Danhof" "zero judges" improperly denied relief and <u>again</u> improperly suggested or ruled that Petitioner should have an improper independent, rather than motion, relief from 1974 judgment action when the 5/3/83

motion for relief from 1974 judgment was proper.[245]

On February 10, 1986:[97]

> "On 2/10/86 and after higher courts' pressure, trial court allowed the filing of the required independent action. And Petitioner wrote:
>
> > 'This action should be allowed to proceed because it should help stop special interest groups' wrongfully procuring substantial public and private properties by procuring and longtime prolonging unconscionable court decisions that deny Constitutional rights by frauds upon the courts... This Court can take special precautions to ensure that the U.S. Constitution is upheld in this matter.'
>
> And at a 4/21/86 trial court hearing, Petitioner alleged that the trial judge replacement #2 (Kobza) should be disqualified because he displayed upholding the U.S. Constitution second to other considerations." Petitioner's Petition For Certiorari To "Danhof" Michigan Court of Appeals At U.S. Supreme Court #88-2116, pp 22a-25a.

And Petitioner's trial court evidence was 1974-86 improperly withheld from state/federal appellate review by the influence of Respondent appellate judges Danhof and Engel who were nonjudicial conspirators beholden to Respondent law firms' newsmedia and the Respondent ex-

priest realtors' religious influence upon statewide voters. Thus, Petitioner DID **NOT** have a full and fair opportunity to litigate any of his claims and issues grounded on that 1974-82 trial court evidence in any 1974-86 state or federal proceedings.

In May, 1986, Petitioner-10% heir filed his priority claim in Muskegon County Probate Court #86-59607-SE and sought evidentiary hearings to determine that decedent was a joint venturer disguised as a moneylender and the estate's law firm was with unclean hands, conflicting interests, and unqualified. But Petitioner was improperly not allowed an evidentiary hearing on the improper ground of **res judicata**.

> "JUDGE KOBZA: Isn't that because the Court of Appeals failed to grant your motion for filing a delayed appeal which precluded you the right to file an appeal in the first place?
>
> PETITIONER: The Court of Appeals did deny me leave for delayed appeal of right. The

Michigan Supreme Court had not yet finished reviewing the matter at a time when YOU denied my motion.

JUDGE KOBZA: Okay.

PETITIONER: And then in '84 YOU denied my independent action. * * * The Court should not uphold the 1974 dismissal until after an evidentiary hearing. * * * I did file my affidavit of indigency. I was a bona fide indigent and I was on welfare. I was picking up garbage and weeds from the grass at this county building for years. And I told the proper authorities timely and so I did what I was supposed to do. * * * The purpose of my being sworn is to prevent entry of a final judgment or order that would preclude the plaintiff's May, 1983 affidavit charging that defendants procured and longtime prolonged the 12/9/74 dismissal of the 1973 action by frauds upon the Court. * * *

JUDGE KOBZA: I will not entertain any evidence. * * * We are not taking any testimony. * * *

PETITIONER: Plaintiff is justified in demanding that this Court first resolve whether defendants' counsel is even qualified before resolving any other issues of this hearing.

JUDGE KOBZA: I'll resolve that right now. You do not have the right to pick your opponent counsel. * * *

PETITIONER: And plaintiff makes this statement right now for the purpose of preventing entry of any final judgment or order that would preclude resolution of these following issues: Whether defendants' counsel is even qualified to represent defendants; two, whether the alleged 12 frauds upon the Court even existed that could procure and prolong the 12/9/74 dismissal for 11 years. * * * the really pertinent facts are verifiable by the complete record of the 1973 action, including the one thousand trial exhibits available to this Court. * * * all of

defendants' claims since March 25, 1986 are moot because defendants' counsel is unqualified to represent the three Johnson defendants herein. * * * Judge Kobza erred in February, 1984 when Judge Kobza read and refused to allow plaintiff to even file the independent action of which there is a copy within the 1973 file * * * a trial court's final judgment or order dismissing this 1983 action would be contrary to federal and state constitution and laws cited herein. "A grant of summasry judgment is premature if made before discovery on a disputed issue is complete." That is a 364 NW2d 723, 1985 decision. * * * that Judge Kobza would then be obstructing justice * * * plaintiff requests ... resolve whether the plaintiff ever had an evidentiary hearing of his alleged 12 frauds upon the Court about which he had to file an affidavit 'way back in 1983, which the appellate court said could be resolved by an independent action. This is it. This 1986 independent action is here and I'm entitled to an evidentiary hearing. * * * this Court is in error to consolidate the two cases at this time. * * *

JUDGE KOBZA: These were the items that were litigated in the 1973 action before Judge Piercey?

PETITIONER: The items that are in the independent action are the 12 frauds upon the Court. They were never litigated before Judge Piercey. **They were never litigated in any court,** including this Court, Judge Kobza. There has never been an evidentiary hearing of my 12 frauds upon the Court * * * IT IS ERROR TO STATE THAT I have filed a claim upon which relief cannot be granted because you <u>can</u> grant relief. All you have to do is grant me an evidentiary hearing. And I am not in the mood for letting this rich powerful huge law firm down the street come along and pull this dirty trick on me and throw my case out in the street and even

prevent me from filing any more papers. It's a mockery of justice. * * * any judge that would sign such a mockery is putting the Constitution second to whatever power and influence is coming from that big building * * *

CULVER FIRM'S ATTORNEY NEWMAN: I haven't been involved in case very long * * * We have filed a motion for summary disposition * * * to dismiss was because Mr. Johnson had misinterpreted the Court of Appeals recent ruling that some independent action should be entertained * * * The majority opinion seemed to suggest that no such action should be filed. So we filed a pretty simple little motion for summary disposition and motion to dismiss because that's what we believed the majority of the Court of Appeals would have wanted us to do based upon their opinion. * * *

JUDGE KOBZA: This case ended in 1976..." 5/7-6/20/86 trial court hearings. (Emphasis added).

Thus in 1986, the trial judge replacement #2 Kobza erroneously ruled that the 1973 case --that had been having post-judgment trial court hearings in 1982 to perfect appeal[127] -- had ended in 1976!

On May 7 thru June 20, 1986, Muskegon Circuit Court's replacement trial judge #2 Kobza **who never reviewed the evidence** (a) improperly stated that Petitioner

did have a delayed appeal of right;[225](b) COMBINED#73-7432 CK contract-conversion-libel & slander-motion for relief from 1974 judgment action with the #86-21207 CZ independent relief from 1974 judgment action, and (c) improperly granted Respondent three Johnsons' conflicting interests Culver and Parmenter two law firms' verbal motions for a **res judicata summary judgment dismissal** mischaracterized as a motion for summary disposition for failure to state any claim upon which relief can be granted[229] **even though there had been an unfair trial, no appeal of right, and improper 1974-86 withholding trial evidence from appellate review constituting no full and fair opportunity to litigate any claims and issues.**

On March 3, 1988, the "Danhof" state court of appeals affirmed said June 20, 1986 **summary res judicata**-failure to state any claim dismissal judgment implying

that the Muskegon Circuit Court trial judge replacement #2, Judge Kobza, had reviewed the trial court evidence -- **though he never did** because he merely ordered it removed from the record at the 1983 onset of his denying Petitioner's motion for an evidentiary hearing for relief from the 1974 judgment for frauds upon the courts.

During 1989, the "Danhof" state court of appeals affirmed **summary judgment res judicata dismissals** of (1) Petitioner's county circuit court 73-C7432-CK Contract/motion for relief from 1974 judgment action combined with 86-21207-CZ independent relief from 1974 judgment action, AND (2) county probate court 86-59607-SE granting same two law firms' res judicata summary judgment dismissal of Petitioner's claim and distribution of Respondent estate. [But the estate is not closed to this day from a two years'

delay of distribution to 10% heir-Petitioner plus pending appeal to Michigan Supreme Court #97521].

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The United States District Court, Western District of Michigan Southern Division, had June 7, 1990-to-June 29, 1992 jurisdiction of Petitioners' civil rights class action pursuant to Const. Amends. 1,5,14; 42 U.S.C.S. § 1985(2)(3); 28 U.S.C. §§ 1228(a), 1331, Fed.R.Civ.P. Rule 8(a)(1).[183]

> "6/7/90 54 ORDER (1 pg) by Magistrate Hugh W. Brenneman Jr. granting motion to proceed on pltfs' proposed 4th amended complaint (to amend complaint) [41-1]." District Court 1:90CV175 Docket Sheet p 8.

> "6/15/92 125 AMENDMENT by pltf Donald Edgar Johnson to notice of appeal [121-1] (dmh) [Entry date 07/01/92] * * * 6/29/92 -- FILING FEE PAID for appeal on 6/5/92 by pltf in the amount of $105.00, receipt #021339. (dmh)." Dist. Ct. Docket Sheets.

Neither Petioner's nonclass action-captioned non-42 U.S.C.S. § 1985 complaint or Petitioners' classaction-captioned

42 U.S.C.S. § 1985 fourth amended complaint could be **res judicata** summary judgment **dismissed** because (1) it was shown that neither Petioner or Petitioners ever had a full and fair (with **fair trial** plus appellate review of trial court evidence) opportunity to litigate **any** claims or issues in the prior state and federal proceedings as mandated by federal law, and (2) Petitioners had never filed any 42 U.S.C.S. § 1985 civil rights class action before the 1990 #1:90-CV-175 action.

> "Giving preclusive effectg to state court judgments is, however, inappropriate 'where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.' Allen v. McCurry, 449 U.S. 90,101, 101 S.Ct.. 411,418, 66 LEd2d 308 (1980); see alsc Haring v. Prosise, 462 U.S. 306,313, 103 S.Ct. 2368,2373, 76 LEd2d 595 (1983); Fellowship of Christ Church v. Thorburn, 758 F2d at 1144. Vinson v. Campbell County Fiscal Court, 820 F2d 194,197 (6th Cir.1987)." Walker v. Schaeffer (1988 6th Cir.) 854 F2d 138,142. Also see State Judgments-Federal Courts 72 LEd2d 911,921.

> "[T]he state court judgment cannot be given preclusive effect unless the party against

> whom the estoppel is asserted had a 'full and fair opportunity' to litigate the issue decided by the court. Allen, 449 U.S. at 101, 101 S. Ct. at 418; see also Walker v Schaefer, 854 F2d 136,142 (6th Cir. 1988); Fellowship of Christ Church v Thorburn, 758 F2d 1140,1144 (6th Cir. 1985) (per curiam)." Eyer v City of Reynoldsburg (1991 ED Ohio) 756 F Supp 344,347.

But high on the United States hierarchy, ex-U.S. Court of Appeals Chief Judge Engel needed a smoke screen and his former District Court associates succumbed to Conspirators' frauds by filing a **non**class action-captioned #1:90-CV-175 erroneous Opinion and Judgment on December 18, 1990 granting Respondents' motion to **res judicata** summary judgment dismiss grounded on Respondents' deceptive 'eighty orders' small dossier of evidence; **not** nonmovants-Petitioners' dossier of a preponderance of evidence:

> "The plaintiff's dossier also contains * * * **eighty orders** * * * the plaintiff's 'civil rights' complaint is simply his latest attempt to attack the judgment entered by the circuit court back in 1974. **The doctrine of res judicata prohibits such an attack.** Therefore, the defendants' motions to dismiss are granted

and the plaintiff's fourth amended complaint is dismissed with prejudice." 12/18/90 District Court Opinion.

"DONALD EDGAR JOHNSON, Plaintiff, v. RICHARD GORDON JOHNSON et al., Defendants * * * In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's complaint is DISMISSED with prejudice. * * * /s/ Benjamin F. Gibson, U.S. District Judge." 12/18/90 Dist. Ct. Judgment.

Respondents continued their tortious conduct in the Court of Appeals for the Sixth Circuit which affirmed, and in this Supreme Court #91-847 which declined certiorari, reviewing the evidentiary record, and rehearing on March 9, 1992 with a nonclass caption.

On March 10, 1992, the next day, Petitioners were denied access to file their pleadings in District Court for relief from the December 18, 1990 judgment pursuant to Fed.R. Civ.P. Rules 9(b) and 60(b)(6) within a "reasonable time" under extraordinary circumstances.

> **Mistakes * * * Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time. * * * This rule does not limit the power of a court to * * * set aside a judgment for fraud upon the court. Fed.R.Civ.P. Rule 60(b)(6).

District Court neither filed the motion or printed it on the 1:90CV175 docket sheet. It denied access to Petitioner's grievance in violation of Const. Amends. 1 and 5.

> "The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process pretection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amend. 1,5." Matter of N.C. Trading Cust. & Pat. App.(1978) 586 F2d 221.

> "Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

On April 16, 1992, there was District

Court's class action-captioned Order rejecting Petitioners' F.R.C.P. Rules 9(b) and 60(b)(6) motion plus supplements for an evidentiary hearing to determine if the December 18, 1990 nonclass action-captioned "final" Judgment was procured and prolonged by frauds upon the courts. The Order stated in essence, "This class action has been res judicata dismissed with prejudice by way of District Court's nonclass action-captioned #1:90-CV- 175 December 18, 1990 Judgment affirmed by the Court of Appeals #91-1160 and the Supreme Court #91-847 March 9, 1992 nonclass action-captioned affirmation."

> "DONALD EDGAR JOHNSON, et al, Plaintiffs, vs. RICHARD GORDON JOHNSON, et al, Defendants. ORDER REJECTING PLEADINGS. Judgment in this action was entered December 18, 1990 granting defendants' motion to dismiss the complaint. Plaintiff subsequently appealed to the United States Court of Appeals for the Sixth Circuit and the decision of this court was affirmed. The Supreme Court thereafter apparently denied plaintiff's petition for a writ of certiorari, and on March 9, 1992, denied plaintiff's petition for rehearing. * * * Such motions when predicated on 'fraud (whether heretofore

AND (8) ADDING HIS ASSISTANT ATTORNEY, A COURT STENOGRAPHER, AND HUGE INFLUENTIAL OPPOSING COUNSEL AS NECESSARY DEFENDANTS -- AND WHERE THE HIGHER COURTS NEVER ONCE TOOK DELIVERY OF THE FULL MEANINGFUL RECORD OF THE CASE FOR A MEANINGFUL REVIEW -- AND WHERE A COURT OF APPEALS 3 JUDGES PANEL REFUSED TO EVER ALLOW THEIR NAMES TO APPEAR ON THEIR ORDERS OF DEPRIVATION -- AND WHERE THE STATE SUPREME COURT REFUSED JURISDICTION!

* * *

> And plaintiff raised a federal question by arguing that not even the U.S. Congress can make a law respecting the right of the people to petition the government for a redress of grievances. Const. Amend. 1. And the Michigan Court of Appeals' **unknown judges** refused to reverse trial court's refusal to file plaintiff's 'required' independent action." Petitioner's Petition For Certiorari At U.S. Supreme Court #85-357.

In January, 1986 as Petitioner was 1984-86 continuously seeking access to file a "Danhof" appellate court improperly-required independent action for relief

from the 1974 county trial court dismissal judgment, Petitioner's father-joint venture partner died owing Petitioner his share of damages from said 1964-86 Confidence Game conspiracy via Petitioner's pending Muskegon Circuit Court #73-7432 CK. He had made out his last Will in 1979 -- when he was still on a "never-wound-down" 1964-80 nightclub-phono records joint venture with Petitioner -- that reduced Petitioner's previous 25% to 10% as if following the directions of the conspiring law firms herein. (Petitioner's children and heirs were listed as decedent's niece and nephew rather than grandaughter and grandson).

On February 3, 1986, the "Danhof" "zero judges" improperly denied relief and again improperly suggested or ruled that Petitioner should have an improper independent, rather than motion, relief from 1974 judgment action when the 5/3/83

motion for relief from 1974 judgment was proper.[245]

On February 10, 1986:[97]

> "On 2/10/86 and after higher courts' pressure, trial court allowed the filing of the required independent action. And Petitioner wrote:
>
> > 'This action should be allowed to proceed because it should help stop special interest groups' wrongfully procuring substantial public and private properties by procuring and longtime prolonging unconscionable court decisions that deny Constitutional rights by frauds upon the courts... This Court can take special precautions to ensure that the U.S. Constitution is upheld in this matter.'
>
> And at a 4/21/86 trial court hearing, Petitioner alleged that the trial judge replacement #2 (Kobza) should be disqualified because he displayed upholding the U.S. Constitution second to other considerations." Petitioner's Petition For Certiorari To "Danhof" Michigan Court of Appeals At U.S. Supreme Court #88-2116, pp 22a-25a.

And Petitioner's trial court evidence was 1974-86 improperly withheld from state/federal appellate review by the influence of Respondent appellate judges Danhof and Engel who were nonjudicial conspirators beholden to Respondent law firms' newsmedia and the Respondent ex-

priest realtors' religious influence upon statewide voters. Thus, Petitioner DID **NOT** have a full and fair opportunity to litigate any of his claims and issues grounded on that 1974-82 trial court evidence in any 1974-86 state or federal proceedings.

In May, 1986, Petitioner-10% heir filed his priority claim in Muskegon County Probate Court #86-59607-SE and sought evidentiary hearings to determine that decedent was a joint venturer disguised as a moneylender and the estate's law firm was with unclean hands, conflicting interests, and unqualified. But Petitioner was improperly not allowed an evidentiary hearing on the improper ground of **res judicata**.

> "JUDGE KOBZA: Isn't that because the Court of Appeals failed to grant your motion for filing a delayed appeal which precluded you the right to file an appeal in the first place?
>
> PETITIONER: The Court of Appeals did deny me leave for delayed appeal of right. The

Michigan Supreme Court had not yet finished reviewing the matter at a time when YOU denied my motion.

JUDGE KOBZA: Okay.

PETITIONER: And then in '84 YOU denied my independent action. * * * The Court should not uphold the 1974 dismissal until after an evidentiary hearing. * * * I did file my affidavit of indigency. I was a bona fide indigent and I was on welfare. I was picking up garbage and weeds from the grass at this county building for years. And I told the proper authorities timely and so I did what I was supposed to do. * * * The purpose of my being sworn is to prevent entry of a final judgment or order that would preclude the plaintiff's May, 1983 affidavit charging that defendants procured and longtime prolonged the 12/9/74 dismissal of the 1973 action by frauds upon the Court. * * *

JUDGE KOBZA: I will not entertain any evidence. * * * We are not taking any testimony. * * *

PETITIONER: Plaintiff is justified in demanding that this Court first resolve whether defendants' counsel is even qualified before resolving any other issues of this hearing.

JUDGE KOBZA: I'll resolve that right now. You do not have the right to pick your opponent counsel. * * *

PETITIONER: And plaintiff makes this statement right now for the purpose of preventing entry of any final judgment or order that would preclude resolution of these following issues: Whether defendants' counsel is even qualified to represent defendants; two, whether the alleged 12 frauds upon the Court even existed that could procure and prolong the 12/9/74 dismissal for 11 years. * * * the really pertinent facts are verifiable by the complete record of the 1973 action, including the one thousand trial exhibits available to this Court. * * * all of

defendants' claims since March 25, 1986 are moot because defendants' counsel is unqualified to represent the three Johnson defendants herein. * * * Judge Kobza erred in February, 1984 when Judge Kobza read and refused to allow plaintiff to even file the independent action of which there is a copy within the 1973 file * * * a trial court's final judgment or order dismissing this 1983 action would be contrary to federal and state constitution and laws cited herein. "A grant of summasry judgment is premature if made before discovery on a disputed issue is complete." That is a 364 NW2d 723, 1985 decision. * * * that Judge Kobza would then be obstructing justice * * * plaintiff requests ... resolve whether the plaintiff ever had an evidentiary hearing of his alleged 12 frauds upon the Court about which he had to file an affidavit 'way back in 1983, which the appellate court said could be resolved by an independent action. This is it. This 1986 independent action is here and I'm entitled to an evidentiary hearing. * * * this Court is in error to consolidate the two cases at this time. * * *

JUDGE KOBZA: These were the items that were litigated in the 1973 action before Judge Piercey?

PETITIONER: The items that are in the independent action are the 12 frauds upon the Court. They were never litigated before Judge Piercey. **They were never litigated in any court,** including this Court, Judge Kobza. There has never been an evidentiary hearing of my 12 frauds upon the Court * * * IT IS ERROR TO STATE THAT I have filed a claim upon which relief cannot be granted because you <u>can</u> grant relief. All you have to do is grant me an evidentiary hearing. And I am not in the mood for letting this rich powerful huge law firm down the street come along and pull this dirty trick on me and throw my case out in the street and even

> prevent me from filing any more papers. It's a mockery of justice. * * * any judge that would sign such a mockery is putting the Constitution second to whatever power and influence is coming from that big building * * *
>
> CULVER FIRM'S ATTORNEY NEWMAN: I haven't been involved in case very long * * * We have filed a motion for summary disposition * * * to dismiss was because Mr. Johnson had misinterpreted the Court of Appeals recent ruling that some independent action should be entertained * * * The majority opinion seemed to suggest that no such action should be filed. So we filed a pretty simple little motion for summary disposition and motion to dismiss because that's what we believed the majority of the Court of Appeals would have wanted us to do based upon their opinion. * * *
>
> JUDGE KOBZA: This case ended in 1976..." 5/7-6/20/86 trial court hearings. (Emphasis added).

Thus in 1986, the trial judge replacement #2 Kobza erroneously ruled that the 1973 case --that had been having post-judgment trial court hearings in 1982 to perfect appeal[127] -- had ended in 1976!

On May 7 thru June 20, 1986, Muskegon Circuit Court's replacement trial judge #2 Kobza **who never reviewed the evidence** (a) improperly stated that Petitioner

did have a delayed appeal of right;[225](b) COMBINED#73-7432 CK contract-conversion-libel & slander-motion for relief from 1974 judgment action with the **#86-21207 CZ** independent relief from 1974 judgment action, and (c) improperly granted Respondent three Johnsons' conflicting interests Culver and Parmenter two law firms' verbal motions for a **res judicata summary judgment dismissal** mischaracterized as a motion for summary disposition for failure to state any claim upon which relief can be granted[229] **even though there had been an unfair trial, no appeal of right, and improper 1974-86 withholding trial evidence from appellate review constituting no full and fair opportunity to litigate any claims and issues.**

On March 3, 1988, the "Danhof" state court of appeals affirmed said June 20, 1986 **summary res judicata**-failure to state any claim dismissal judgment implying

that the Muskegon Circuit Court trial judge replacement #2, Judge Kobza, had reviewed the trial court evidence -- **though he never did** because he merely ordered it removed from the record at the 1983 onset of his denying Petitioner's motion for an evidentiary hearing for relief from the 1974 judgment for frauds upon the courts.

During 1989, the "Danhof" state court of appeals affirmed **summary judgment res judicata dismissals** of (1) Petitioner's county circuit court 73-C7432-CK Contract/motion for relief from 1974 judgment action combined with 86-21207-CZ independent relief from 1974 judgment action, AND (2) county probate court 86-59607-SE granting same two law firms' res judicata summary judgment dismissal of Petitioner's claim and distribution of Respondent estate. But the estate is not closed to this day.

XXXV. **UNCONSTITUTIONAL DENIAL OF ACCESS TO DISTRICT COURT.**

"Access to the courts is a 'fundamental constitutional right'." Bounds v Smith (1977 U.S.N.C.) 52 LEd2d 72.

"Access to the courts of the United States is a constitutional right guaranteed by due procerss clause of Fifth and Fourteenth Amendments." Silver v Cormier (1976 CA Colo) 529 F2d 161.

"Constitutional right of access to courts cannot be infringed upon or burdened... Punitive damages are recoverable." Id.